MANUAL
OF
HEALTH LAWS

1903

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MANUAL

FOR THE USE OF

BOARDS OF HEALTH

OF

MASSACHUSETTS,

CONTAINING

THE STATUTES RELATING TO THE PUBLIC HEALTH,
THE POWERS AND DUTIES OF THE MEDICAL
EXAMINERS, AND THE REGISTRATION
OF VITAL STATISTICS,

WITH

REFERENCES TO DECISIONS OF THE SUPREME COURT OF MASSACHUSETTS ON THE SAME.

PREPARED UNDER THE DIRECTION OF

THE STATE BOARD OF HEALTH

BY AUTHORITY OF CHAPTER 230 OF THE ACTS OF 1902.

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The State Board of Publication.

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ORGANIZATION OF THE STATE BOARD OF HEALTH OF MASSACHUSETTS.

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ELECTED JUNE, 1903.

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On Water Supply and Sewerage. — Messrs. MILLS, WALCOTT, HULL, BARTOL and TOBEY.

On Public Institutions. — Messrs. PORTER, WALCOTT, MILLS and BARTOL.

On Food and Drugs. — Messrs. BARTOL, WALCOTT and PORTER.

On Legislation and Legal Proceedings. — Messrs. TOBEY, MEAD and HULL.

On Health of Towns and Correspondence with Local Boards of Health. — Messrs. WALCOTT, MILLS, MEAD and BARTOL.

On Contagious Diseases. — Messrs. WALCOTT, BARTOL and PORTER.

On Publications. — Messrs. WALCOTT, HULL and BARTOL.

On Registration of Vital Statistics. — Messrs. WALCOTT, BARTOL and PORTER.

HISTORICAL SKETCH.

The State Board of Health of Massachusetts had its origin as early as 1849, but was not established by law until twenty years later. The year 1849 was one of unusual sickness and mortality throughout the State. Typhoid fever, dysentery and scarlet-fever had prevailed to an unusual extent, and, in addition to these, Asiatic cholera had invaded the State and destroyed about twelve hundred of its population.

In that year, by authority of the Legislature, a commission was appointed to report upon the sanitary condition of the State. One of the primary recommendations of this commission advised the establishment of a "general board of health," the functions of which were very clearly stated; and when the board was finally established in 1869, under the title of the State Board of Health and Vital Statistics, it was organized very nearly in accord with the suggestions of the sanitary commission of 1849.

The Board was reorganized, with enlarged powers, in 1886.

BY-LAWS OF THE BOARD.

ADOPTED, 1886.

(1.) The Board shall, on the first Thursday in June in each year, elect by ballot a chairman and a secretary, who shall each hold office for one year and until his successor shall have been chosen. In the absence or disability of the chairman or secretary, a chairman or secretary *pro tem.* may be chosen, as the Board may determine.

(2.) Regular meetings of the Board shall be held on the first Thursday of each month, at such hour as the Board may designate, and, unless otherwise ordered, shall be holden at the office of the Board. Special meetings may be called at any time by the chairman, and shall be called by him upon the request in writing of two members of the Board.

(3.) At the annual meeting of the Board, or as soon thereafter as may be, the following standing committees shall be chosen by ballot: —

A committee on Finance;

A committee on Publications;

A committee on Water Supply and Sewerage (acting under chapter 75, sections 112–130);

A committee on Public Institutions;

A committee on Food and Drugs;

A committee on Legislation and Legal Proceedings;

A committee on Health of Towns;

A committee on Correspondence with Local Boards of Health;

A committee on Contagious Diseases;

A committee on Vital Statistics.

(4.) Four members shall make a quorum for the transaction of business.

INTRODUCTION.

This Manual of the statutes of Massachusetts relating to public health has been prepared under the provisions of chapter 230 of the Acts of 1902 for the use of local boards of health, and for all persons directly interested in questions which pertain to public health.

The first Manual of Health Laws was published in 1882 and followed quite closely the numbering of chapter 80 of the Public Statutes, which was issued in that year. As successive manuals were issued, about once in three years, it became necessary to change this order of numbering in consequence of the enactment of many new statutes.

The statutes and the decisions of the supreme court have both been subjected to careful scrutiny with reference to the accuracy of their presentation.

The present edition, the first which has been sanctioned by the authority of the General Court, contains (in addition to the laws published in the new edition of the Revised Laws, 1902) all the health statutes enacted by the Legislatures of 1902 and 1903.

The laws relating to the medical examiners, and also those relating to the registration of vital statistics, both of which are of special interest to the medical practitioner, have been introduced in the later editions of the Manual.

The statutes impose upon boards of health the duty of protecting the people from those causes and influences which may injuriously affect their health. Mr. Justice Wells, in delivering the opinion of the court in the case

of Salem *v.* Eastern Railroad Company, 98 Mass. 431, 433, says, referring to local boards of health, "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health; and it is important that their proceedings should be delayed as little as possible. Delay might defeat all beneficial results; and the necessity of the case, and the importance of the public interests at stake, justify prompt action."

OFFICE OF THE STATE BOARD OF HEALTH,
BOSTON, STATE HOUSE, November, 1903.

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CHAPTER 75 OF THE REVISED LAWS OF MASSACHUSETTS.

OF THE PRESERVATION OF THE PUBLIC HEALTH.

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SECTIONS 131-135. — Quarantine.
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STATE BOARD OF HEALTH.

SECTION 1. There shall be a state board of health consisting of seven persons, one of whom shall annually be appointed by the governor, with the advice and consent of the council, for a term of seven years.

State board of health.

1869, 420, § 1. 1879, 291, § 2. P. S. 79, § 1. 1886, 101, § 1. 136 Mass. 578.

The state board of health was originally established by chap. 420, Acts of 1869.

Its powers were subsequently enlarged by chap. 167, Acts of 1871, and chap. 183, Acts of 1878.

By chap. 291, Acts of 1879, its powers were transferred to the newly established state board of health, lunacy and charity.

By chap. 101, Acts of 1886, the state board of health was re-established, and its powers were still further enlarged by chap. 274, Acts of 1886, by chap. 375, Acts of 1888, chap. 355 of the Acts of 1894, chap. 510 of the Acts of 1897, chap. 104 of the Acts of 1901, and chap. 110 of the Acts of 1902.

SECTION 2. Said board shall hold meetings at least once in each month, shall make its own by-laws and shall annually, on or before the thirty-first day of December, make a report to the governor and council for the year ending on the preceding thirtieth day of September.

Meetings and report.

1869, 420, §§ 2, 3. 1879, 291, § 7. P. S. 79, § 3. 1886, 101, § 2.

Acts of 1902, 230.

AN ACT TO AUTHORIZE THE STATE BOARD OF HEALTH TO PUBLISH CERTAIN INFORMATION IN THE INTERESTS OF THE PUBLIC HEALTH.

SECTION 1. The state board of health is hereby authorized to publish for general distribution such parts of its annual report and such other matter as it may deem adapted to promote the interests of the public health in this commonwealth: *provided*, that the expense of such publication is paid out of the appropriation for the general expenses of the board and does not exceed in any one year the sum of five hundred dollars. The board is also authorized to publish not oftener than once in three years, beginning with the year nineteen hundred and two, a manual of the laws relating to boards of health in this commonwealth, together with such other information upon the same subject as the board may deem expedient, the same to be distributed among the local boards of health throughout the commonwealth. The cost of such publications shall not exceed five hundred dollars for each edition and shall be paid out of the appropriation for general expenses of the board.

May publish parts of annual report, etc., and manual of health laws.

Rev. Laws, 75.

SECTION 3. Said board shall elect a secretary, who shall be the executive officer and shall hold office during the pleasure of the board. He shall, as directed by it, perform or superintend the work prescribed by law for the board and all other duties required by it. He shall not be ex-officio a member of the board, but the board may elect one of its members secretary pro tempore and such member may, in the absence or disability of the secretary, perform his duties. The secretary shall receive from the commonwealth an annual salary of three thousand dollars and his necessary travelling expenses incurred in the performance of his official duties. No member of the board shall receive any compensation; but the actual personal expenses of any member while engaged in his official duties, audited by the board, shall be paid by the commonwealth. 1869, 420, § 5. 1886, 101, § 3. 1889, 370.

Secretary.

SECTION 4. Said board shall take cognizance of the interests of health and life among the citizens of the commonwealth, make sanitary investigations and inquiries relative to the causes of disease, and especially of epidemics, the sources of mortality and the effects of localities, employments, conditions and circumstances on the public health, and relative to the sale of drugs and food and the adulterations thereof; and shall gather such information relative thereto as it considers proper for

Powers and duties of board.

diffusion among the people. It shall advise the government relative to the location and other sanitary conditions of any public institutions; and shall have oversight of inland waters, sources of water supply and vaccine institutions, and may, for the use of the people of the commonwealth, produce and distribute antitoxin, and vaccine lymph. It shall annually examine all main outlets of sewers and drainage of cities and towns of the commonwealth, and the effect of sewage disposal, and shall annually report thereon to the general court, with such recommendations for the protection of the interests of persons and property and for the prevention of offensive odors and objectionable conditions as it considers expedient.

1869, 420, § 2. 1882, 263, § 5. 1894, 355. 1903, 480.
1879, 291, § 3. 1886, 101, § 4. 1897, 510, § 1. 125 Mass. 189.
P. S. 80, § 1. 1888, 375, § 1. 1901, 104.

For decision in the case of Stone *v.* Heath, 179 Mass. 385, see sect. 112, chap. 75, R. L. on a later page.

Acts of 1902, 110.

AN ACT TO TRANSFER THE POWERS AND DUTIES OF THE INSPECTOR AND ASSAYER OF LIQUORS TO THE STATE BOARD OF HEALTH.

SECTION 1. The office of inspector and assayer of liquors is hereby abolished. **Office of liquor inspector abolished.**

SECTION 2. The powers and duties heretofore conferred and imposed on the inspector and assayer of liquors are hereby conferred and imposed on the state board of health. **Powers transferred to state board of health.**

Rev. Laws, 75.

SECTION 5. In the performance of its duties relative to the sale of drugs and food it may appoint inspectors, analysts and chemists, and may remove them. Such inspectors shall have the same power and authority relative to drugs and food as is given by sections forty-two and fifty-two of chapter fifty-six, relative to milk, to the inspectors named therein. Whoever hinders, obstructs or in any way interferes with any such inspector, analyst or other officer appointed under the provisions of this section, while in the performance of his official duty, shall be punished by a fine of not more than fifty dollars for the first offence and of not more than one hundred dollars for each subsequent offence. **Powers and duties of board. Food and drug inspection.**

1882, 263, §§ 5, 7. 1884, 289, § 3. 1885, 352, § 5.

Acts of 1902, 272.

AN ACT TO AUTHORIZE THE STATE BOARD OF HEALTH TO PUBLISH RESULTS OF ANALYSES AND CERTAIN OTHER INFORMATION.

SECTION 1. The state board of health shall cause to be published as often as once each month in the official publication of said

board, and also, if in its opinion the public health can be served thereby, may cause to be published in one or more papers in Massachusetts, a certificate of the examination or analysis made by authority of said board during the preceding month of any article of food manufactured or offered for sale in the commonwealth, which is adulterated within the meaning of chapter seventy-five of the Revised Laws; and said board of health shall also cause to be published, with such certificate of examination, a statement of the trade-mark, brand mark or name, with the name and place of business of the manufacturer, which appear upon the package or box containing such adulterated article, or with the name and place of business of the wholesale dealer of whom the goods were obtained.

Board to publish results of analyses of certain adulterated articles.

Rev. Laws, 75.

SECTION 6. The state board of health may annually expend not more than twelve thousand five hundred dollars for the enforcement of the provisions of sections sixteen to twenty-seven, inclusive; but not less than three-fifths of said amount shall be annually expended for the enforcement of the laws against the adulteration of milk and milk products.

Expenditures authorized.

1882, 263, § 5. 1883, 263, § 1. 1884, 289, § 1. 1891, 319. 1903, 467.

SECTION 7. Said board shall annually report to the general court the number of prosecutions made under the provisions of sections sixteen to twenty-seven, inclusive, and an itemized account of the money expended in carrying out the provisions thereof. 1884, 289, § 2.

Report of prosecutions and expenditures.

SECTION 8. If smallpox or any other contagious or infectious disease dangerous to the public health exists or is likely to exist in any place within the commonwealth, the state board shall make an investigation thereof and of the means of preventing the spread of the disease, and shall consult thereon with the local authorities. It shall have co-ordinate powers as a board of health, in every city and town, with the board of health thereof, or with the mayor and aldermen of a city or the selectmen of a town in which there is no such board.

Investigation of contagious diseases.

1879, 291, § 6. P. S. 89, § 2.

For other powers and duties of the state board of health see later pages.

CITY AND TOWN BOARDS OF HEALTH.

SECTION 9. In each city except Boston the board of health shall consist of three persons, one of whom shall be a doctor of medicine and no one of whom shall be a member of the city council. Unless

a different mode of appointment or election is provided in the city charter, one member shall annually in January be appointed by the mayor, subject to confirmation by the board of aldermen, for a term of three years next succeeding the first Monday in February, and if appointed under the provisions of this section, may be removed by the mayor for cause, and vacancies shall be filled by appointment for the residue of the unexpired term. Members of the board shall receive such compensation as the city council may determine. Boards of health in towns shall be chosen as provided in section three hundred and thirty-eight of chapter eleven.

Boards of health in cities.

1849, 211, §§ 1, 2. 1877, 133, § 1. 1894, 174. 172 Mass. 417.
G. S. 26, § 2. P. S. 80, §§ 4, 8. 1895, 332. 173 Mass. 338.

SECTION 10. Every such board shall organize annually by the choice of one of its number as chairman. It may appoint a physician to the board, who shall hold his office during its pleasure, may choose a clerk who in a city shall not be a member of the board and may employ the necessary officers, agents and assistants to execute the health laws and its regulations. It may fix the salary or other compensation of such physician and of its clerk and other agents and assistants, but the amount of such compensation shall not exceed the appropriation therefor. It may make rules and regulations for its own government and for the government of its officers, agents and assistants.

Boards of health, organization, physician, etc.

1816, 44, § 7. G. S. 26, §§ 3, 4. P. S. 80, §§ 5, 6, 9, 10.
R. S. 21, §§ 3, 4. 1877, 133, §§ 2, 3.

SECTION 11. In each city such board shall annually, in January, make a full and comprehensive report to the city council of its acts during the preceding year and of the sanitary condition of the city. It shall also, if the city council or the standing committee thereof on finance so requires, send to the auditor of the city an estimate in detail of the appropriation required by its department for the next financial year.

Boards of health, annual reports of.

1877, 133, § 4. P. S. 80, § 11.

Rev. Laws, 11.

SECTION 338. A town may elect a board of health consisting of three persons, who shall serve for terms of one, two and three years respectively, beginning with the day following the meeting at which they are elected, or until their respective successors are chosen and qualified; and thereafter such town shall, at its annual town meeting, choose one member of such board who shall hold office for three years from the day following such meeting and until another is chosen and qualified in his stead. If no such board is chosen, the selectmen shall act as a board of health. In every town having more than five thousand inhabitants

Town board of health, election, term.

as determined by the latest national or state census at least one member of the board, unless composed of the selectmen, shall be a physician. 1894, 218; 473, § 1. 1895, 506, §§ 2, 3. 1898, 548, § 334.

Town board of health, manner of election.

SECTION 343. The election of the board of health shall be by ballot.

Rev. Laws, 75.

Town board of health, annual report of deaths to.

SECTION 12. The board of health in towns which have according to the latest census more than five thousand inhabitants shall send an annual report of the deaths in such town to the state board of health upon forms to be prescribed by said state board. 1894, 218. 1897, 428, § 2.

Town board of health, agents of.

SECTION 13. The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency or if it cannot be conveniently assembled; and any such agent shall have all the authority which the board appointing him had; but he shall in each case report his action to the board within two days for its approval, and shall be directly responsible to it and under its direction and control. An agent who is appointed to make sanitary inspections may make complaint of violations of any law, ordinance or by-law relative to the public health in a city or town. 1866, 271. 1879, 75. P. S. 80, § 16.

It is not necessary that a complaint to recover the forfeiture provided by the Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under the Pub. Stats., chap. 80, sect. 16 (Rev. Laws, chap. 75, sect. 13).

An omission in a complaint, under the Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

A notice issued, under Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

Notice of regulations.

SECTION 14. The board of health of a town shall publish all regulations made by it in a newspaper of its town, or, if there is no such newspaper, shall post them up in a public place in the town. Such publication or posting shall be notice to all persons.

1816, 44, §§ 3, 11. R. S. 21, § 8. G. S. 26, § 6. P. S. 80, § 19. 98 Mass. 443.

SECTION 15. The board of health of a city or town shall, to the exclusion of the overseers of the poor, retain charge of any case arising under the provisions of this chapter in which it shall have acted. 1874, 121, § 1. P. S. 80, § 17. **Retention of cases.**

ADULTERATED DRUGS AND FOOD.

SECTION 16. No person shall manufacture, offer for sale or sell, within this commonwealth, any drug or article of food which is adulterated within the meaning of section eighteen; but no employee, other than a manager or superintendent, shall be punished for a violation of this section unless such violation was intentional on the part of the said employee. 1882, 263, § 1. 1897, 344, § 1. 1903, 367. **Sale of adulterated food, etc., forbidden.**

SECTION 17. The term "drug," as used in sections sixteen to twenty-seven, inclusive, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used therein shall include all articles, simple, mixed or compound, used in food or drink by man. 1882, 263, § 2. 1886, 171. 1897, 344, § 2. **Drugs and food defined.**

SECTION 18. A drug shall be deemed to be adulterated: 1. If, when sold under or by a name recognized in the United States pharmacopœia, it differs from the standard of strength, quality or purity prescribed therein, unless the order therefor requires an article inferior to such standard or unless such difference is made known or so appears to the purchaser at the time of the sale. 2. If, when sold under or by a name not recognized in the United States pharmacopœia but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity prescribed in such work. 3. If its strength, quality or purity falls below the professed standard under which it is sold. **Adulteration of drugs and food defined.**

Food shall be deemed to be adulterated: 1. If any substance has been mixed with it so as to reduce, depreciate or injuriously affect its quality, strength or purity. 2. If an inferior or cheaper substance has been substituted for it wholly or in part. 3. If any valuable or necessary constituents or ingredients have been wholly or in part taken from it. 4. If it is in imitation of or is sold under the name of another article. 5. If it consists wholly or in part of a diseased, decomposed, putrid, tainted or rotten animal or vegetable substance or article, whether manufactured or not, or in case of milk, if it is produced by a diseased animal. 6. If it is colored, coated, polished or powdered in such a manner as to conceal its damaged or inferior condition, or if by any means it is made to appear better or of

greater value than it is. 7. If it contains any added substance or ingredient which is poisonous or injurious to health. 8. If it contains any added antiseptic or preservative substance, except common table salt, saltpetre, cane sugar, alcohol, vinegar, spices, or, in smoked food, the natural products of the smoking process; but the provisions of this definition shall not apply to any such article if it bears a label on which the presence and the percentage of every such antiseptic or preservative substance are clearly indicated, nor shall it apply to such portions of suitable preservative substances as are used as a surface application for preserving dried fish or meat, or as exist in animal or vegetable tissues as a natural component thereof, but it shall apply to additional quantities. The provisions of this and the two preceding sections relative to food shall not apply to mixtures or compounds not injurious to health and which are recognized as ordinary articles or ingredients of articles of food, if every package sold or offered for sale is distinctly labelled as a mixture or compound with the name and per cent of each ingredient therein. 1882, 263, § 3. 1884, 289, §§ 5, 7. 1897, 344, § 3. 1901, 341.

Ingredients of food to be labelled, except, etc.

SECTION 19. If a statement of any of the ingredients of an article of food or drink or of an article entering into food or drink is required by law to be stated upon the label of such article, such statement and the name and address of the manufacturer or vendor of the article shall be distinctly and conspicuously printed on the label in straight, parallel lines of plain, uncondensed, legible type, well spaced on a plain ground. The statement of ingredients shall be clearly separated from and not interspersed or confused with other matter, shall specify every such ingredient by its ordinary name, and shall be in the English language. The letters of said type shall be not less than one-twelfth of an inch long, and shall be larger than those of any other printed matter on the label or package, except the name of the compound or chief article enclosed therein which may be in larger type. The required label shall be firmly attached to or printed on the exterior of the package or envelope of the said article, on the top or side thereof and in plain sight. But the state board of health may in writing approve specific labels not strictly in accordance with the above provisions, if it is of opinion that the information required by law is set forth thereon clearly enough for the reasonable protection of the purchaser. Goods labelled in violation of the provisions of this section shall be subject to the provisions of law relative to adulteration of food which is unlabelled. 1901, 396, §§ 1-3, 5.

SECTION 20. Whoever offers or exposes for sale or delivers to a purchaser any drug or article of food shall, upon application of an

inspector, analyst or other officer or agent of the state board of health and upon tender to him of the value thereof, furnish a sample sufficient for the analysis of any such drug or article of food which is in his possession. 1882, 263, § 6.

Samples for analysis.

SECTION 21. Before such sample is analyzed, a portion thereof shall be reserved and sealed by the analyst; and, upon a complaint against any person, such reserved portion shall, upon application, be delivered to the defendant or his attorney. 1884, 289, § 8.

Portion of sample to be reserved.

SECTION 22. Canned articles of food shall not be offered for sale unless they bear a mark to indicate the grade or quality thereof and the name and address of the person who packed or who sells them. 1897, 344, § 4.

Grade of canned food to be marked.

SECTION 23. All canned articles of food which have been prepared from dried products and have been soaked before canning shall be plainly marked by an adhesive label having on its face the word "*soaked*" in letters of legible type not smaller than two line pica.* All cans, jugs and other packages containing maple syrup or molasses shall be plainly marked by an adhesive label having on its face the name and address of the person who made and prepared the same with the name and quality of the ingredients of the goods in letters of the size and description aforesaid. 1897, 344, § 5.

Marking of soaked canned goods.

SECTION 24. Whoever falsely stamps or labels any cans, jars or other packages containing fruit or food of any kind, or knowingly permits such stamping or labelling, or, except as hereinafter provided, violates any of the provisions of sections sixteen to twenty-seven, inclusive, shall be punished by a fine of not less than one hundred nor more than five hundred dollars; and whoever sells such goods so falsely stamped or labelled shall be punished by a fine of not less than ten nor more than one hundred dollars. 1882, 263, § 7. 1897, 344, § 6.

Penalty for falsely stamping, etc., cans.

SECTION 25. Whoever, for the purpose of sale, fraudulently adulterates food with any substance injurious to health, or knowingly barters, gives away, sells or has in his possession with intent to sell any substance intended for food which has been adulterated with any substance injurious to health, shall be punished by a fine of not more than three hundred

Penalty for adulterating food.

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* Sample of

TWO LINE PICA

dollars or by imprisonment for not more than one year; and the articles so adulterated shall be forfeited and destroyed under the direction of the court.

R. S. 131, § 12. G. S. 166, § 3. 1878, 76. P. S. 208, § 3. 125 Mass. 202.

An indictment under the Gen. Stats., chap. 166, sect. 3 (Rev. Laws, chap. 75, sect. 25), which charges the defendant with unlawfully and fraudulently adulterating "a certain substance intended for food, to wit, one pound of confectionery," does not sufficiently describe the substance alleged to have been adulterated, and, if seasonably objected to for that cause, must be quashed.

The word "confectionery" is a generic word which includes a great variety of kinds of articles usually sold in a confectioner's shop, and does not describe the substances, which the defendant is charged with adulterating, with the precision and certainty that the Constitution of the Commonwealth and the rules of criminal pleading require.

Commonwealth *v.* Chase, 125 Mass. 202.

SECTION 26. Whoever, for the purpose of sale, fraudulently adulterates any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing it to be adulterated, shall be punished by a fine of not more than four hundred dollars or by imprisonment for not more than one year; and such adulterated drugs and medicines shall be forfeited and destroyed under the direction of the court.

Penalty for adulterating drugs or medicines.

R. S. 131, § 3. 1853, 394. G. S. 166, § 5. P. S. 208, § 5. 1896, 397, § 19.

SECTION 27. If the standard of strength or purity of any drug has been raised since the issue of the last edition of the United States pharmacopœia, no prosecution relative to it shall be maintained until such change of standard has been published throughout the commonwealth.

Prosecutions as to drugs limited.

1882, 263, § 4. 1884, 289, § 5.

BAKERIES.

SECTION 28. All buildings which are occupied as biscuit, bread or cake bakeries shall be properly drained and plumbed. They shall be provided with a proper wash room and water closets, having ventilation apart from the bake room or rooms where food products are manufactured; and no water closet, earth closet, privy or ash pit shall be within or communicate directly with the bake room of any bakery. 1896, 418, §§ 1, 4.

Sanitation of bakeries.

SECTION 29. Every room which is used for the manufacture of flour or meal food products shall, if required by the board of health, have an impermeable floor constructed of cement or of tiles laid in cement, and an additional floor of wood properly saturated with linseed oil. The walls and ceiling of such room shall be plastered or wainscoted, and, if re-

Construction of bake rooms.

quired by the board of health, shall be whitewashed at least once in three months. The furniture and utensils therein shall be so arranged that they and the floor may at all times be kept clean and in good sanitary condition. 1896, 418, § 2.

Sleeping-places regulated.

SECTION 30. The sleeping-places for persons who are employed in a bakery shall be separate from the rooms in which flour or meal food products are manufactured or stored. 1896, 418, § 5.

Storage rooms regulated.

SECTION 31. The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned. 1896, 418, § 3.

Alterations of premises.

SECTION 32. The owner, agent or lessee of any property affected by the provisions of sections twenty-eight and twenty-nine shall, within sixty days after service of notice requiring any alterations to be made in such property, comply therewith. Such notice shall be in writing, and may be served upon such owner, agent or lessee personally or by mail directed to his last known address. 1896, 418, § 7.

Penalties.

SECTION 33. Whoever violates the provisions of the five preceding sections, or refuses to comply with any requirement of the board of health authorized therein, shall, for the first offence, be punished by a fine of not less than twenty nor more than fifty dollars; for the second offence, by a fine of not less than fifty nor more than one hundred dollars or by imprisonment for not more than ten days; for the third offence, by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than thirty days or by both such fine or imprisonment. 1896, 418, § 6.

Board of health to enforce.

SECTION 34. The board of health of a city or town may make such further regulations as the public health may require, and shall cause such regulations, together with the six preceding sections, to be printed and posted in all such bakeries and places of business. 1896, 418, § 8. 1902, 403, § 1.

HOSPITALS AND DANGEROUS DISEASES.

Hospitals.

SECTION 35. A town may establish hospitals within its limits for the treatment of diseases which are dangerous to the public health. They shall be subject to the orders and regulations of the board of health or of a committee of the town appointed for the purpose.

1792, 58, § 2. G. S. 26, §§ 40, 41. R. S. 21, §§ 35, 36. P. S. 80, §§ 70, 71.

SECTION 36. The physician, nurses, attendants, patients and all

persons approaching or coming within the limits of such hospitals, and all furniture and other articles used or brought there, shall be subject to the regulations of said board or committee.

Hospitals, physicians, etc., in, subject to board.

1792, 58, § 4. R. S. 21, § 39. G. S. 26, § 43. P. S. 80, § 74.

SECTION 37. Such hospitals shall not be established within one hundred rods of an inhabited dwelling house situated in an adjoining town, without the consent of such town.

Hospitals, situation of.

1764-5, 12, § 5. 1792, 58, § 2. R. S. 21, § 37. G. S. 26, § 42. P. S. 80, § 72.

SECTION 38. Whoever occupies or uses a building for a hospital in a part of a city or town prohibited by the mayor and aldermen or selectmen shall forfeit not more than fifty dollars for every month during which such offence continues, and in like proportion for a portion of the month. The supreme judicial court or the superior court shall have jurisdiction in equity to restrain such occupancy or use. 1870, 306. P. S. 80, § 73.

Penalty for unlawful use.

SECTION 39. Each city shall provide for the treatment, either in a hospital or as out patients, of indigent persons who are suffering from contagious or infectious venereal diseases. 1895, 400.

Treatment of certain diseases required.

SECTION 40. Each city shall establish and be constantly provided, within its limits, with one or more isolation hospitals for the reception of persons having smallpox or any other disease dangerous to the public health. Such hospitals shall be subject to the orders and regulations of the boards of health of the cities in which they are respectively situated. A city which, upon request of the state board of health, refuses or neglects to comply with the provisions of this section, shall forfeit not more than five hundred dollars for each refusal or neglect.

Isolation hospitals in cities.

1901, 171.

SECTION 41. No discrimination shall be made against the treatment of venereal diseases in the out patient department of any general hospital supported by taxation in any city in which special hospitals, other than hospitals connected with penal institutions, are not provided for the treatment of such diseases at public expense; but said hospital may establish a separate ward for their treatment. 1894, 511, § 3.

Discrimination against venereal diseases forbidden.

SECTION 42. If a disease which is dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected with such disease, the board shall immediately provide such hospital or place of reception, and such nurses and other assistance and necessaries, as is judged best for his accommodation and for the safety of the inhabi-

Board to provide hospital, etc., when.

tants, which shall be subject to the regulations of the board. The board may cause any sick or infected person to be removed thereto, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the board, and, if necessary, persons in the neighborhood may be removed.

1701-2, 9, §§ 1, 2.	1837, 244, §§ 1, 2.	P. S. 80, §§ 40, 41, 75.
1792, 58, § 5.	1838, 158.	137 Mass. 554.
1797, 16, § 1.	1848, 119.	140 Mass. 322.
R. S. 21, §§ 16, 17, 40.	G. S. 26, §§ 16, 17, 44.	162 Mass. 176.

Notice should be given to the town to which the infected person belongs, before commencing an action to recover the expenses incurred by furnishing him with assistance and necessaries.

Springfield *v.* Worcester, 2 Cush. 52.

The following notice, sent by the selectmen of Springfield to the selectmen of Worcester, was held to be sufficient: —

SPRINGFIELD, May 25, 1846.

GENTLEMEN: —James E. Belden, a colored man, came here, not far from the first of this month, diseased with the smallpox. The expenses of his sickness have been borne by this town, the man himself having no means of paying them. According to the information we have, the town of Worcester is liable for these expenses. We have therefore thought it our duty (although not legally obliged so to do) to notify you of the case, that you may take such measures in regard to it as you may deem proper. We are told Henry W. Miller of your place is well acquainted with Belden. The physicians who have had charge of the case state that their patient will probably recover. His disease has been the worst form of smallpox.

In behalf of the selectmen of Springfield,

HENRY MORRIS, *Chairman.*

TO THE SELECTMEN OF WORCESTER.

Springfield *v.* Worcester, 2 Cush. 52.

Under the Pub. Stats., chap. 80, sects. 40, 41, 75 (Rev. Laws, chap. 75, sect. 42), the board of health of a town has no authority to take possession of a dwelling-house and the furniture therein, without the consent of the owner and occupant and to his exclusion, and use the house as a hospital for a person found therein who is infected with a contagious disease, and is too sick to be removed without danger to his health; and the owner cannot maintain an action of contract against the town for the use and occupation of the house during the time it was so held by the board of health.

Spring *v.* Hyde Park, 137 Mass. 554.

A member of the board of health of a town has no authority, against the consent of the owner or occupant, to take possession of a dwelling-house in which a contagious disease exists, and of the furniture therein, to the exclusion of such owner or occupant, and to carry away and destroy portions of the furniture, or to station a person on the premises with instructions to prevent ingress to and egress from the same, except in the manner pointed out in the Pub. Stats., chap. 80 (Rev. Laws, chap. 75).

In an action against a member of the board of health of a town, who unlawfully took possession of the furniture in a house in which a contagious disease existed, and destroyed it, the defendant asked the judge to rule that the measure of damages was the market value of the property in its infected condition. The judge refused so to rule, and instructed the jury that the plaintiff was entitled to recover what the property was worth at the time it

was taken, taking into consideration how much the value had been affected by its exposure to infection. *Held*, that the defendant had no ground of exception.

Brown *v.* Murdock, 140 Mass. 314.

The board of health of a city cannot, without the consent of the owner, lawfully establish and use premises as a hospital for patients sick with the smallpox, except under a warrant issued in accordance with the provisions of Pub. Stats., chap. 80, sect. 43 (Acts of 1902, chap. 206, sect. 2).

An owner of land, who is not in possession and has no right of possession thereof, cannot maintain an action of trespass *quare clausum fregit*, but may maintain an action for an injury to the reversion.

The owner of a house in a city, which, while in the possession of a tenant at will, is taken and used, without the owner's consent, by the board of health of the city as a hospital for parties sick with the smallpox, may maintain an action against the members of the board for the injury to his reversion, if it appears that such use of the house diminished its rentable value.

A tenant at will in possession of a house in a city cannot, as against the rights of the owner, authorize the board of health of the city to establish in the house a hospital for patients afflicted with an infectious disease, and to maintain such a hospital there to the damage of the reversion.

Hersey *v.* Chapin, 162 Mass. 176.

The following rules for the guidance of local boards of health in dealing with cases of disease dangerous to the public health may be deduced from the foregoing decisions: —

In case it is desired to isolate the sick person, he should be removed to a hospital to be provided by the board, except in the case where he cannot be so removed without danger to his health.

Even where the condition of the sick person is such that he cannot be removed without danger to his health, the board has no authority to establish the place where the sick person is as a hospital, without the consent of the owner thereof.

In case the board desires to provide a hospital to which to remove such cases or to establish as a hospital the place where the sick person is, and is unable to hire the building for that purpose, it should procure the issuance of a warrant under Pub. Stats., chap. 80, sect. 43 (Acts of 1902, chap. 206, sect. 2).

Notice of infected places.

SECTION 43. If such disease exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection, and shall give public notice of infected places to travellers by displaying red flags at proper distances and by all other means which in their judgment may be most effectual for the common safety. Whoever obstructs the selectmen, board of health or its agent in using such means, or wilfully removes, obliterates, defaces or handles such red flags or other signals shall forfeit not less than ten nor more than one hundred dollars for each offence.

1792, 58, § 6. R. S. 21, § 41. 1838, 158. G. S. 26, § 45. 1873, 2, § 2. P. S. 80, § 76.

SECTION 44. If a physician or other person who is in any of said hospitals or places of reception, or who attends, approaches or

is concerned with them, violates a regulation relative thereto, with respect to himself or to his or another person's property, he shall forfeit not less than ten nor more than one hundred dollars for each offence.

Penalty for violation of regulations.

1792, 58, § 6. R. S. 21, § 42. 1838, 158. G. S. 26, § 46. P. S. 80, § 77.

SECTION 45. The board of health of a town near to or bordering upon an adjoining state may in writing appoint suitable persons, who shall attend at places by which travellers may pass from infected places without the commonwealth, and who may examine such travellers as the board suspects of bringing any infection dangerous to the public health, and, if necessary, restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from an infected place, who, without such license, travels within this commonwealth, unless to return by the most direct way to the state whence he came after he has been cautioned to depart by the persons so appointed, shall forfeit not more than one hundred dollars.

Guard on state border.

1739-40, 1, § 3. 1742-3, 17, § 3. 1797, 16, § 3. R. S. 21, § 18. G. S. 26, § 18. P. S. 80, § 42.

Acts of 1902, 206.

AN ACT RELATIVE TO DISEASES DANGEROUS TO THE PUBLIC HEALTH.

SECTION 1. The board of health of any city or town which has established or which may hereafter establish within its limits a hospital for the reception of persons having smallpox or any other disease dangerous to the public health, may receive for care and treatment in such hospital persons from an adjoining town who are infected with any of said diseases, provided the approval of the board of health of the city or town into which such persons are to be taken shall first have been obtained.

Board of health may receive into contagious disease hospital infected persons from an adjoining town.

Rev. Laws, 75.

SECTION 46. A magistrate authorized to issue warrants in criminal cases may issue a warrant directed to the sheriff of the county or his deputy, or to any constable or police officer, requiring them under the direction of the board to remove any person who is infected with contagious disease, or to impress and take up convenient houses, lodging, nurses, attendants and other necessaries. The removal authorized by this section may be made to any hospital in an adjoining city or town established for the reception of persons having smallpox or other disease dangerous to the public health, provided the assent of the board of health of the city or town to which such removal is to be made shall first have been obtained.

Warrant to remove sick persons, etc.

1701-2, 9, § 3. 1742, 3, 17, § 1. 1797, 16, § 4. R. S. 21, § 19. G. S. 26, § 19. 1877, 211, § 1. P. S. 80, § 43. 1902, 206, § 2. 137 Mass. 554. 140 Mass. 322. 162 Mass. 176.

SECTION 47. If a prisoner in a jail, house of correction or workhouse has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, in writing, direct his removal to a hospital or other place of safety, there to be provided for and securely kept until its further order. If he recovers from the disease, he shall be returned to his former place of confinement. If the person so removed has been committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

Removal of sick prisoners.

1816, 44, §§ 10, 40. R. S. 21, §§ 25, 26. G. S. 26, §§ 25, 26. P. S. 80, §§ 49, 50.

SECTION 48. An inmate of a public charitable institution or a prisoner in a penal institution who is afflicted with syphilis shall be forthwith placed under medical treatment, and, if, in the opinion of the attending physician, it is necessary, he shall be isolated until danger of contagion has passed or the physician determines that his isolation is unnecessary. If, at the expiration of his sentence, he is afflicted with syphilis in its contagious or infectious symptoms, or if, in the opinion of the attending physician of the institution or of such physician as the authorities thereof may consult, his discharge would be dangerous to public health, he shall be placed under medical treatment and cared for as above provided in the institution where he has been confined until, in the opinion of the attending physician, such symptoms have disappeared and his discharge will not endanger the public health. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the place in which he has a settlement, after notice of the expiration of his sentence and of his condition to the overseers of the poor thereof, or, if he is a state pauper, to the state board of charity. 1891, 420.

Treatment of syphilitics.

SECTION 49. A householder who knows that a person in his family or house is sick of smallpox, diphtheria, scarlet fever or any other infectious or contagious disease dangerous to the public health shall forthwith give notice thereof to the board of health of the city or town in which he dwells. Upon the death, recovery or removal of such person, the householder shall disinfect to the satisfaction of the board such rooms of his house and articles therein as, in the opinion of the board, have been exposed to infection or contagion. Whoever

Householder to give notice of dangerous diseases.

violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

1742-3, 17, §§ 5, 6. R. S. 21, § 43. P. S. 80, § 78. 1890, 102.
1792, 58, § 7. G. S. 26, § 47. 1884, 98, § 1.

SECTION 50. If a physician knows that a person whom he is called to visit is infected with smallpox, diphtheria, scarlet fever or any other disease dangerous to the public health, he shall immediately give notice thereof in writing over his own signature to the selectmen or board of health of the town; and if he refuses or neglects to give such notice, he shall forfeit not less than fifty nor more than two hundred dollars for each offence. 1827, 129. R. S. 21, § 44.

Penalty on physician for not giving notice, etc.

G. S. 26, § 48. P. S. 80, § 79. 1884, 98, § 2. 1891, 188.

SECTION 51. The board of health shall keep a record, in blank books to be provided by the secretary of the commonwealth, of all reports received pursuant to the two preceding sections, which shall contain the name and location of all persons who are sick, their disease, the name of the person who reports the case and the date of such report. Said board shall give immediate information to the school committee of all contagious diseases so reported to them.

Record of contagious diseases. Report to school committee.

1884, 98, §§ 3, 4.

SECTION 52. If the board of health of a city or town has had notice of a case of smallpox, diphtheria, scarlet fever or of any other disease dangerous to the public health therein, it shall within twenty-four hours thereafter give notice thereof to the state board of health stating the name and the location of the patient so afflicted, and the secretary thereof shall forthwith transmit a copy of such notice to the state board of charity.

Local board to notify state board.

1883, 138, § 1. 1886, 101, § 4. 1893, 302, § 1.

SECTION 53. If such board refuses or neglects to give such notice, the city or town shall forfeit its claim upon the commonwealth for the payment of expenses as provided in section fifty-seven.* 1883, 138, § 2. 1893, 302, § 2.

Forfeiture of claim, when.

SECTION 54. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, which are recoverable of a private person or corporation, may be recovered in an action of contract.

Expenses, how recovered.

1849, 211, § 6. G. S. 26, § 49. P. S. 80, § 80. 98 Mass. 442.

SECTION 55. Fines and forfeitures which are incurred under the general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relative to health, shall inure to the use of such town. R. S. 21, § 46.

Disposition of forfeitures.

1849, 211, § 7. G. S. 26, § 50. P. S. 80, § 81. 5 Cush. 408. 153 Mass. 216.

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* See Acts of 1902, chap. 213, sect. 57, having been repealed. Next page.

Under Statutes of 1849, chap. 211, sect. 7 (Rev. Laws, chap. 75, sect. 55), which provides that all fines and forfeitures, incurred under the general law or the special laws applicable to any town or city, or the ordinances, by-laws, and regulations of any town or city, relating to health, shall inure to the use of such town or city, as may be recovered by complaint in the name of the treasurer, it was held that such fines and forfeitures were recoverable only by complaint in the name of the treasurer of the city or town, and in no other way.

Commonwealth *v.* Fahey, 5 Cush. 408.

Under sect. 26, chap. 28 of the Pub. Stats., the city marshal or other police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city.

The ordinances and by-laws of the city of Boston relating to burying-grounds and the burial of the dead were held to be regulations relating to health within the meaning of the above statute.

Commonwealth *v.* Fahey, 5 Cush. 411.

SECTION 56. The provisions of sections forty-two, forty-three, and forty-four, so far as they confer authority for the removal of patients from their homes, shall not apply to smallpox, except in cases of persons residing in boarding houses or hotels or in cases of two or more families occupying the same dwelling or in other cases in which, in the opinion of the board and the attending physician, the case cannot be properly isolated.

Certain provisions not to apply to smallpox.

1838, 158. 1840, 39. 1848, 119.
G. S. 26, § 51. 1872, 189. P. S. 80, § 82. 140 Mass. 324.

Acts of 1902, 213.

AN ACT RELATIVE TO COMPENSATING CITIES AND TOWNS FOR CARING FOR PERSONS INFECTED WITH THE SMALLPOX OR OTHER DISEASE DANGEROUS TO THE PUBLIC HEALTH.

SECTION 1. Reasonable expenses incurred by the board of health of a city or town in making the provision required by law for persons infected with the smallpox or other disease dangerous to the public health shall be paid by such person or his parents, if he or they be able to pay, otherwise by the city or town in which he has a legal settlement, upon the approval of the bill by the board of health of such city or town; and such settlements shall be determined by the overseers of the poor. If the person has no settlement such expense shall be paid by the commonwealth, upon approval of bills therefor by the state board of charity. In all cases of persons having settlements a written notice sent within the time required in case of aid given to paupers, shall be sent by the board of health or by the officer or board having the powers of a board of health in the city or town where the person is sick, to the board of health, or to the officer or board having the powers of a board of health in the city or town in which such person has a settlement, who shall forthwith transmit a

Expenses, how to be paid.

copy thereof to the overseers of the poor of the place of settlement. In case the person has no settlement such notice shall be given to the state board of health, in accordance with the provisions of section fifty-two of chapter seventy-five of the Revised Laws. 1701-2, 9, §§ 1, 2.

1797, 16, § 1. 1837, 244, § 1. 1848, 119. R. S. 21, § 16. G. S. 26, § 16. 1874, 121, § 2. P. S. 80, §§ 40, 83. R. L. 75, § 57. 1902, 213, §§ 1, 2, 3.

SECTION 2. No person for whose care and maintenance a city or town or the commonwealth has incurred expense in consequence of smallpox, scarlet fever, diphtheria or other disease dangerous to the public health shall be deemed to be a pauper by reason of such expenditure.

Patients not to be pauperized.

Rev. Laws, 75.

SECTION 58. If a sheriff or other officer impresses or takes up any houses, stores, lodging or other necessaries, or impresses men, the town in which such persons or property are so impressed shall pay a just compensation to the persons entitled thereto.

Compensation for houses, etc., impressed.

R. S. 21, § 24. G. S. 26, § 24. P. S. 80, § 48.

Rev. Laws, 85.

SECTION 14. No city or town officer shall send to the state hospital any person who is infected with smallpox or other disease dangerous to the public health, or, except as provided in section ten (chap. 85, Rev. Laws), any other sick person whose health would be endangered by removal; but all such persons who are liable to be maintained by the commonwealth shall be supported during their sickness by the city or town in which they are taken sick, and notice of such sickness shall be given in writing to the state board of charity, which may examine the case and, if found expedient, order the removal of the patient; but such notice in the case of sick persons whose health would be endangered by such removal shall be signed by the overseers of the poor or by a person appointed by them by special vote, who shall certify, after personal examination, that in their or his opinion such removal at the time of his application for aid would endanger his health. A city or town officer who knowingly violates the provisions of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Smallpox patients.

1855, 445, § 2. 1865, 162, §§ 1, 3. 1879, 291, § 3. P. S. 86, §§ 25, 27. 1885, 211.

HYDROPHOBIA AND DOG MUZZLING.

Rev. Laws, 102.

SECTION 132. Every license issued to the owner of a dog shall have a description of the symptoms of hydrophobia printed thereon.

Such description shall be supplied by the secretary of the state board of health to the clerks of the several cities and towns upon application therefor.

License to contain description, etc., of hydrophobia.

1877, 167, § 4. P. S. 102, § 83. 1886, 101, § 4.

SECTION 158. The mayor and aldermen of a city or the selectmen of a town may order that any dog within the limits of such city or town, respectively, shall be muzzled or restrained from running at large during such time as shall be prescribed by such order. After passing such order and posting a certified copy thereof in two or more public places in such city or town, or, if a daily newspaper is published in such city or town, by publishing such copy once in such newspaper, the mayor and aldermen or selectmen may issue their warrant to one or more of the police officers or constables of such city or town, who shall, after twenty-four hours from the publication of such notice, kill all dogs found unmuzzled or running at large contrary to such order, and who shall receive such compensation therefor as is provided in section one hundred and forty-three.

Selectmen may order dogs to be muzzled, etc.

1877, 167, §§ 1, 2. P. S. 102, §§ 101, 102.

SECTION 159. The mayor and aldermen or selectmen may cause service of such order to be made upon the owner or keeper of the dog by causing a certified copy thereof to be delivered to him; and if he refuses or neglects for twelve hours thereafter to muzzle or restrain such dog as so required, he shall be punished by a fine of not more than twenty-five dollars.

Service of order. Penalty.

1877, 167, § 3. P. S. 102, § 103.

SECTION 160. A county, city or town officer who refuses or wilfully neglects to perform the duties imposed upon him by the provisions of this chapter relating to dogs shall be punished by a fine of not more than one hundred dollars, which shall be paid, except in the county of Suffolk, into the county treasury. Whoever is aggrieved by such refusal or neglect may report the same forthwith to the district attorney of his district.

Penalty on town officers.

1858, 139, § 6. G. S. 88, § 66. 1867, 130, § 11.
1859, 225, § 13. 1864, 299, § 10. P. S. 102, § 104.

IMPURE ICE.

Rev. Laws, 75.

SECTION 59. The state board of health, upon complaint in writing of not less than twenty-five consumers of ice cut from any pond or stream and sold or held for sale, alleging that said ice is impure and injurious to health, after notice to the parties interested of the time and place appointed for the hearing,

Impure ice.

and after hearing said parties, may make such orders relative to the sale of said ice as in its judgment the public health requires.

1886, 287, § 1.

SECTION 60. Such orders shall be served upon any person who sells or offers for sale impure ice, and may be enforced in equity by the supreme judicial court or the superior court. 1886, 287, §§ 2, 3.

Enforcement of orders.

SECTION 61. A person who is aggrieved by such orders may appeal therefrom in the manner prescribed by section ninety-five, and shall be subject to the provisions of sections ninety-six and ninety-seven, and the court may award costs in its discretion. 1886, 287, § 3.

Appeal.

LYING-IN HOSPITALS.

SECTION 62. The selectmen of a town may issue a license, subject to revocation by them, to a person to establish or keep therein for two years, a lying-in hospital, hospital ward or other place for the reception, care and treatment of women in labor, if the board of health shall first certify to the selectmen that, in its judgment, the applicant for such license is a suitable person, and that from its inspection and examination of such hospital, hospital ward or other place aforesaid, the same is suitable for such business. 1876, 157, §§ 1, 2. P. S. 80, §§ 56, 57.

Lying-in hospitals.

SECTION 63. Such hospital, hospital ward, or other place shall be subject to visitation and inspection at any time by the selectmen, the board of health and the chief of police, and if, during the year, it receives more than six patients, by the state board of health.

1876, 157, § 3. P. S. 80, § 58. 1886, 101, § 4.

Lying-in hospitals, visitation of.

SECTION 64. Whoever establishes or keeps or is concerned in establishing or keeping a hospital, hospital ward or other place for the purpose mentioned in section sixty-two or is engaged in any such business, without such license, shall for the first offence be punished by a fine of not more than five hundred dollars, to be equally divided between the complainant and the town; and for any subsequent offence by imprisonment for not more than two years. 1876, 157, § 4. P. S. 80, § 59.

Penalties for keeping hospital without license.

PROTECTION OF INFANTS.

Rev. Laws, 83.

SECTION 2. The state board of charity may grant licenses to maintain boarding houses for infants. Every application therefor shall, except in Boston, first be approved by the board of health

of the city or town in which such boarding house is to be maintained. Such license shall be granted for a term not exceeding one year, shall state the name of the licensee, the particular premises in which the business may be carried on, the number of infants which may be boarded there at one time, and, if required by said board, it shall be posted in a conspicuous place on the licensed premises. No greater number of infants shall be kept at one time on the premises than is authorized by the license, and no infant shall be kept in a building or place not designated in the license. A record of licenses issued shall be kept by the state board of charity, which shall forthwith give notice to the board of health of the city or town in which the licensee resides of the granting of such license and of the terms thereof. The state board of charity and boards of health of cities and towns except Boston shall annually, and may, at any time, visit and inspect, or designate a person to visit and inspect, premises so licensed.

Infant boarding houses to be licensed.

1889, 416, § 3. 1892, 318, §§ 3, 4. 162 Mass. 596.

SECTION 16. Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant other than the first two, give notice thereof in writing to the board of health of the place where such infant is to be so boarded, stating its name and age and the name and residence of the person so taking it to board. The board of health may enter and inspect such house or premises while such business is there carried on, and may direct and enforce the necessary sanitary precautions relative to such children and premises. Whoever violates the provisions of this section or refuses admission to the board of health shall be punished by a fine of not less than fifty nor more than five hundred dollars.

Notice to board of health.

1876, 158. P. S. 80, §§ 60, 61.

NUISANCES AND CAUSES OF SICKNESS.

Rev. Laws, 75.

SECTION 65. The board of health shall examine into all nuisances, sources of filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may in its opinion be injurious to the public health, shall destroy, remove or prevent the same as the case may require and shall make regulations for the public health and safety relative thereto and relative to articles which are capable of containing or conveying infection or contagion or of creating sickness which are brought into or conveyed from its town, or into or from any vessel. Whoever

Boards of health to examine nuisances, destroy them, and make regulations relative to them.

violates any such regulation shall forfeit not more than one hundred dollars. 1797, 16, §§ 3, 5, 11. R. S. 21, §§ 5, 6, 9.
G. S. 26, §§ 5, 7. 97 Mass. 221. 163 Mass. 240.
P. S. 80, §§ 18, 20. 125 Mass. 196. 179 Mass. 385.

A regulation that no person shall remove, cart, or carry through any of the streets, lanes or alleys of a city, any house-dirt, refuse, offal, filth or animal or vegetable substance from any of the dwelling-houses or other places occupied by the inhabitants, in any cart, wagon, truck, hand-cart or other vehicle, unless such person so removing, together with the cart, shall be duly licensed for that employment and purpose by the mayor and aldermen, upon such terms and conditions as they shall deem the health, comfort, convenience or interest of the city require, on pain of forfeiting a sum not less than three dollars nor more than twenty, is valid.

Vandine, petitioner, 6 Pick. 187.

For decision upholding the validity of a regulation prohibiting the keeping of swine in a particular district of a city, see Commonwealth *v.* Patch, 97 Mass. 221.

But see Commonwealth *v.* Young, 135 Mass. 522, to effect that keeping of swine is, in certain cases, an "employment," and that in prohibiting its exercise the board must proceed under Pub. Stats., chap. 80, sects. 84, 87, 88 (Rev. Laws, chap. 75, sects. 91, 94 and 95), and not under sect. 18 (Rev. Laws, chap. 75, sect. 65).

A private passageway about four feet wide, in the city of Boston, was laid out and maintained by the abutters thereon for the benefit of all their lots, which extended to the centre of the passageway. The land formerly belonged to the city of Boston, which reserved the right to lay a sewer through the whole of such passageway, and which for many years had kept the same clear, though it always claimed that it was not its duty to do so, and ceased to do so in the spring of 1891. *Held*, that an ordinance forbidding an abutter to allow filth to remain on that part of the passageway adjoining his land was not unreasonable and indefinite, and that it was no defence to a complaint for the violation thereof, that the defendant was required to remove matter which he had no agency in depositing in the passageway, or to do what he would not be obliged to do if he did not own land abutting on such passageway; or that the ordinance omitted to provide a time beyond which the filth should be allowed to remain; or that it required the defendant to do in part the work which the city had formerly done; or that another ordinance forbade the defendant from removing filth or refuse matter through the streets without a permit from the board of health, it appearing that such removal was intrusted by still another ordinance to the sanitary police; or that the complaint did not set out any of the defendant's right to use the passageway.

Cities and towns may adopt ordinances and by-laws for the preservation and promotion of the health of their inhabitants as an exercise of the police power.

The reasonableness or sufficiency of an ordinance or by-law is not to be tested always by its application to extreme cases.

Commonwealth *v.* Cutter, 156 Mass. 52.

Statute of 1897, chap. 510, does not give the state board of health exclusive jurisdiction of nuisances affecting the purity of the sources of water supply. There is nothing in that statute which takes away or limits the power of local boards of health to deal with nuisances in their respective jurisdictions.

Under Pub. Stats., chap. 80, sect. 20 (Rev. Laws, chap. 75, sect. 65), giv-

ing town boards of health the power to examine into, destroy, remove or prevent "all nuisances, sources of filth, and causes of sickness" within the town, those boards have jurisdiction over nuisances affecting the purity of the water supply as well as other causes of sickness.

The jurisdiction over nuisances given to town boards of health by Pub. Stats., chap. 80, sects. 20–27 (Rev. Laws, chap. 75, sects. 65, 67–69, 71–74), is summary in its nature, and the orders made thereunder are not subject to judicial examination and revision at the instance of parties affected by them before they are carried out. After they are carried out, however, the questions whether there was a nuisance, and, if so, whether it was caused or maintained by the parties charged therewith, may be litigated.

Where a town board of health adjudged certain deposits on land of the plaintiff to be a nuisance, and the plaintiff's land and deposits thereon of the character complained of lay partly in the town to which the board belonged and partly in an adjoining town, it was *held*, that the order of the board must be taken as limited in its scope to the town to which the board belonged, and an objection that it was in excess of their jurisdiction was not well founded.

When a town board of health has adjudged that a nuisance exists, the question what influences or motives may have set the board in motion is immaterial.

It furnishes no ground for interference with a town board of health, who have adjudged certain deposits on land of the plaintiff to be a nuisance as creating danger of pollution to the water supply of the town, that the action of the board was taken with a view to affecting proceedings in a suit pending in the superior court between the plaintiff and the company supplying the town with water.

Stone *v.* Heath, 179 Mass. 385.

Section 66. The board of health of a city, and the board of health of a town if authorized by the town, may make and enforce regulations for the public health and safety relative to house drainage and its connection with public sewers, if a public sewer abuts the estate to be drained. Whoever violates any such regulation shall forfeit not more than one hundred dollars.

Regulations relative to house drainage.

1877, 133, § 5. 1881, 185. P. S. 80, § 12. 1889, 108.

The following decision was made on statutes applying to the city of Boston: —

The Statute of 1885, chap. 382, sect. 2, as amended by the Statute of 1889, chap. 450, sect. 2, providing under a penalty that certain buildings in Boston "situated on a public or private street, court, or passageway, in which there is a public sewer, and every building connected with any sewer, shall have sufficient water-closets connected with the sewer, and shall not have a cesspool or privy, except where in the opinion of the board of health it can be allowed to remain temporarily, and then only as said board shall approve," applies to violations which continue after its passage, or which then come into existence, and is constitutional as an exercise of the police power.

The Legislature by the use of the word "water-closet" in the Statutes of 1885, chap. 382, sects. 1, 2, and 1889, chap. 450, sect. 2, intended an arrangement, then in common use, connected with a sewer, and having a permanent water supply which can be used systematically and regularly for carrying

whatever is deposited therein to the sewer, and not a privy vault, which, although connected with a sewer, has no water supply for flushing it, except such as depends on chance.

Commonwealth *v.* Roberts, 155 Mass. 281.

Nuisances, etc., to be abated by owner.

SECTION 67. Said board shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth or cause of sickness found thereon, within twenty-four hours, or within such other time as it considers reasonable, after notice; and the owner or occupant shall forfeit not more than twenty dollars for every day during which he knowingly violates such order.

1797, 16, § 11. 1855, 369. 98 Mass. 431.
R. S. 21, § 10. G. S. 26, § 8. 132 Mass. 71.
1849, 211, § 3. P. S. 80, § 21. 143 Mass. 113.

An order of a board of health, under the Gen. Stats., chap. 26, sect. 8 (Rev. Laws, chap. 75, sect. 67), for the removal of a nuisance is valid without previous notice to the parties interested and opportunity for them to appear and be heard.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.

An order of a board of health under the Gen. Stats., chap. 26, sect. 8 (Rev. Laws, chap. 75, sect. 67), for removing a nuisance need not prescribe a mode for the removal.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.

An order of the board of health of a city, under the Gen. Stats., chap. 26, sect. 8 (Rev. Laws, chap. 75, sect. 67), directing the owner (or occupant) of land to remove a nuisance in a specific manner, is void.

Watuppa Reservoir *v.* Mackenzie, 132 Mass. 71.

A notice issued, under the Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), by the board of health of a town to the occupant of certain premises, reciting that a nuisance, "consisting of a filthy hog-pen and stable," exists thereon, and ordering him "to abate the said nuisance on your estate, and also to remove your hogs outside the limits of the village, within forty-eight hours after the service hereof," is valid as an order to abate the nuisance, and is not rendered void by the direction to remove the hogs.

Commonwealth *v.* Alden, 143 Mass. 113.

In the absence of statutory authority neither the board of health nor the city council of a city has any power to erect a dam on a person's land, without his consent, for the purpose of abating a nuisance existing on adjacent land.

Cavanagh *v.* Boston, 139 Mass. 426.
cf. Huse *v.* Amesbury, 163 Mass. 240.

A piggery in which swine are kept in such numbers that their natural odors fill the air thereabout and make the occupation of the neighboring houses and passage over the adjacent highways disagreeable is a nuisance, and on the trial of an indictment for maintaining such nuisance evidence that it is the custom in this commonwealth to locate such establishments in populous localities and to tolerate them there is inadmissible.

Commonwealth *v.* Perry, 139 Mass. 198.
cf. Commonwealth *v.* Young, 135 Mass. 526.
See also Fay *v.* Whitman, 100 Mass. 76.
Commonwealth *v.* Sweeney, 131 Mass. 579.

In order to amount to a nuisance, it is not necessary that the corruption of the atmosphere should be such as to be dangerous to health, it is sufficient that the effluvia are offensive to the senses and render habitations uncomfortable.

Per Shaw, C.J., in Eames *v.* Worsted Co., 11 Met. 570–572.

As to conclusiveness of adjudications of a board of health on the existence of a nuisance see

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 446–452.

cf. Miller *v.* Horton, 152 Mass. 540, 545 *et seq.*

The following rules as to orders made under this section may be deduced from the opinion in

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 444.

The order addressed to a person directing him to remove a nuisance should describe the nature and locality of the nuisance.

The order should not direct in what mode the person should proceed to remove the nuisance, but should direct the end to be accomplished, leaving the party to adopt any effectual mode he may choose.

"The manifest purpose . . . is to enable the owner or occupant to remedy the evil in the mode least detrimental or offensive to himself and thus secure himself and his premises from the intrusion of the agents of the board of health."

Service of order for abatement.

SECTION 68. Such order shall be in writing, and may be served personally on the owner, occupant or his authorized agent by any person authorized to serve civil process, or a copy of the order may be left at the last and usual place of abode of the owner, occupant or agent, if he is known and within the commonwealth. If the premises are unoccupied and the residence of the owner or agent is unknown or is without the commonwealth, the board may order the notice to be served by posting it on the premises and by advertising it in one or more newspapers. 1849, 211, § 4. G. S. 26, § 9. P. S. 80, § 22. 143 Mass. 113.

A notice issued, under the Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health, and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

It is not necessary that a complaint to recover the forfeiture provided by the Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of a town for its removal should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under the Pub. Stats., chap. 80, sect. 16 (Rev. Laws, chap. 75, sect. 13).

An omission in a complaint, under the Pub. Stats., chap. 80, sect. 21 (Rev. Laws, chap. 75, sect. 67), for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

See also decisions and rules as to such orders, sect. 67, *sup.*

SECTION 69. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Board to remove, when.

1797, 16, § 11. R. S. 21, § 11. 1849, 211, § 5. G. S. 26, § 10. P. S. 80, § 23. 98 Mass. 445.

"If the owner or occupant neglect to remove the nuisance, the board of health are then at liberty to enter upon the private property where it exists and take such measures as they may see fit for its removal."

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 444.

"The importance of the duty imposed upon the board of health, the necessity of prompt and decisive measures to protect the public health, require a wide discretion in the use of means by which 'to destroy, remove, or prevent' such cause of sickness. If it be necessary to the proper performance of their duty, they may, undoubtedly, in the exercise of their discretion, resort to means and measures which affect injuriously other lands than those upon which the manifestation of the cause of sickness is found."

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 446.

cf., however, Huse *v.* Amesbury, 163 Mass. 240.

Infra, Pub. Stats., chap. 80, sect. 28.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," but who was not heard, and had no opportunity to be heard, such party is not concluded by the findings or adjudications of the board, and may contest all the facts upon which his liability is sought to be established.

Salem *v.* Eastern Railroad Company, 98 Mass, 431, 447.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," the record of proceedings of the board is *prima facie* evidence of the existence of a nuisance which warranted the board in taking action and incurring expense for its removal; but where the defendant was not heard and had no opportunity to be heard, it is not evidence that the nuisance was caused by the defendant, and all the facts upon which it is sought to charge the defendant with liability are open to be tried and determined by the proofs in the case.

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 451.

An action to recover expenses incurred in the removal of a nuisance should be brought in the name of the city or town and not in the names of the members of the board.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.
See also Winthrop *v.* Farrar, 11 Allen, 398.

SECTION 70. If the city council of a city or a town having a population of more than five thousand accepts the provisions of this section, or has accepted the corresponding provisions of earlier laws, no privy vault shall be constructed upon premises which are connected with a public or private sewer or which abut on a public or private street, court or passageway in which there is a public sewer opposite thereto, without permission in writing having first been obtained from the board

Location of privy vaults regulated.

of health of such city or town. And if, in the opinion of said board, a privy vault so situated is injurious to the public health, it shall declare the same to be a nuisance and shall forbid its continuance, and the provisions of the three preceding sections shall apply thereto. 1890, 74. 1899, 184.

SECTION 71. The board, if satisfied upon examination that a building, tenement, room or cellar in its town which is occupied as a dwelling place, has become, by reason of the number of occupants, uncleanliness or other cause, unfit for such purpose, and is liable to become a nuisance or be a cause of sickness to the occupants or to the public, may issue a notice in writing to such occupants or any of them, requiring the premises to be put into a cleanly condition, or to be vacated within such time as the board may deem reasonable. If the persons so notified neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owner, or may remove the occupants forcibly and close up the premises, which shall not be again occupied as a dwelling place without its permission in writing. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars. 1850, 108. G. S. 26, § 11. P. S. 80, § 24.

Eviction from unfit dwelling.

SECTION 72. If a person is convicted on an indictment for a common nuisance injurious to the public health, the court may order the nuisance to be removed or destroyed at the expense of the defendant, under the direction of the board of health. 1801, 16, § 3. R. S. 21, § 12. G. S. 26, § 12. P. S. 80, § 25.

Removal of nuisance by order of court.

SECTION 73. The superior court shall have jurisdiction in equity, either before or pending a prosecution for a common nuisance affecting the public health, to enjoin the maintenance of such nuisance until the matter is decided or the injunction is dissolved. 1827, 88. R. S. 21, § 13. G. S. 26, § 13. P. S. 80, § 26.

Injunction of nuisance.

SECTION 74. If the board considers it necessary for the preservation of life or health to enter any land, building or premises, or go on board a vessel within its town, for the purpose of examining into and destroying, removing or preventing a nuisance, source of filth or cause of sickness, and the board, or any agent thereof sent for that purpose, is refused such entry, any member of the board or such agent may make complaint to a justice of any court of record or to a magistrate authorized to issue warrants in criminal cases, who may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such member or agent of the board, or to any constable of such town, commanding him to take sufficient aid and at any reasonable time

Compulsory examination of premises.

repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and to destroy, remove or prevent the same, under the direction of the board.

1816, 44, § 2. G. S. 26, § 14. 1877, 211, § 1.
R. S. 21, § 14. 1873, 2, § 1. P. S. 80, § 27.

SECTION 75. Land which is wet, rotten, or spongy, or covered with stagnant water, so that it is offensive to residents in its vicinity or injurious to health, shall be deemed a nuisance, which the board of health of the city or town where it lies, upon petition and hearing, may abate in the manner provided in the following sections; but if the expenses of abatement will exceed two thousand dollars, such abatement shall not be made without a previous appropriation therefor.

Land deemed a nuisance, when.

1868, 160, § 1. 1887, 338, § 1. 160 Mass. 486.
P. S. 80, § 28. 132 Mass. 71. 163 Mass. 240.

On a petition for a writ of *certiorari* to quash the proceedings of the board of health of a city, assessing the expense of abating a nuisance under the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75), the record showed a petition, addressed to the board of health, which complained of large quantities of water standing in an open drain between two streets, from which arose such unhealthy odors as to cause great sickness in the neighborhood, and prayed for a hearing; a reference of the same to the next city government; a vote of the board of health, the next year, to view the premises; a view taken; an order that the city engineer, under direction of a committee, be directed to widen, straighten and deepen a watercourse between the two streets, and that the clerk be instructed to notify abutters on the watercourse of a hearing on a certain day, under the Statute of 1868, chap. 160 (Rev. Laws, chap, 75, sect. 75 *et seq.*); a warrant issued by the clerk to a constable to notify abutters of the intention of the board of health to enter upon the premises for the purpose of widening, deepening and straightening the brook, and that a hearing would be given at a time and place named, to all parties interested in the matter, as to the necessity and mode of abating the nuisance caused by the brook and the question of damages, and of the assessment and apportionment of the expenses thereof, and a notice setting forth these things and stating that it was in accordance with the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*). *Held*, that it sufficiently appeared that the board was attempting to act under this Statute. *Held, also*, that the petition was sufficient to give the board jurisdiction.

Grace *v.* Newton Board of Health, 135 Mass. 490.

A petition to the board of health of a city described a nuisance as owing "to large quantities of stagnant water standing in an open drain between two streets of the city." The board of health issued a notice that it was acting under the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*), and abated the nuisance. On a petition for a writ of *certiorari* to quash the proceedings of the board of health, it did not appear whether the drain was a public or a private one, nor for what purpose it was made, and it appeared to be a watercourse. *Held*, that it could not be said that the nuisance was not such as could be abated under the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*), and that it was too late to take this objection.

Grace *v.* Newton Board of Health, 135 Mass. 490.

Under the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect 75 *et seq.*), a board of health may act by a committee in abating a nuisance.

Grace *v.* Newton Board of Health, 135 Mass. 490.

"It [the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*)] contemplates that lands may be entered upon which are not themselves wet, rotten, spongy or covered with stagnant water, and excavations, embankments and drains made thereupon, in order to abate the nuisance, and that proceedings under the statute are in the nature of taking private property for public use."

Per Field, J., in Grace *v.* Newton Board of Health, 135 Mass. 490, 492.

Where a nuisance is artificially created by emptying the sewage of dwelling houses through a private drain in a private way upon the surface of such way and of abutting private land, the board of health has no authority when acting under Pub. Stats., chap. 80, sects. 28 *et seq.* (Rev. Laws, chap. 75, sect. 75 *et seq.*), to abate such nuisance by extending such private drain through such abutting private land to a brook thereon and by cleaning out the brook so that it would carry off the sewage.

Huse *v.* Amesbury, 163 Mass. 240.

In the opinion in this case it is suggested that the nuisance might have been dealt with under Pub. Stats., chap. 80, sects. 18–25 (Rev. Laws, chap. 75, sects. 65, 67–69, 71 and 72).

SECTION 76. Whoever is injured by such nuisance may, by petition describing the premises upon which it is alleged to exist and stating the nature of the nuisance complained of, apply to the board for its abatement; whereupon such board shall view the premises and examine into the nature and cause of such nuisance. 1868, 160, § 2. P. S. 80, § 29.

Application for abatement.

SECTION 77. Upon such examination, if the board is of opinion that the petition should be granted, it shall appoint a time and place for a hearing, first giving reasonable notice thereof to the petitioners, to the persons whose lands it may be necessary to enter upon to abate the nuisance and to any other persons who may be damaged or benefited by the proceedings, and to the mayor or the chairman of the selectmen, unless the selectmen constitute the board of health, that they may be heard upon the necessity and mode of abating such nuisance, the question of damages and of the assessment and apportionment of the expenses of the abatement.

Application for abatement, proceedings.

1868, 160, § 3. P. S. 80, § 30. 135 Mass. 490. 166 Mass. 399.

An order of the board of health of a city under Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*), directing the owner of land to remove a nuisance, is void if passed without a previous notice and hearing.

Watuppa Reservoir *v.* Mackenzie, 132 Mass. 71.

SECTION 78. Such notice shall be in writing, and may be served, of any person authorized to serve civil process, by personal service upon the mayor or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited

Form of notice and how served.

by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the land is unoccupied and the owner or agent is unknown or out of the commonwealth, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more newspapers in such manner and for such length of time as the board may order. 1868, 160, § 4. P. S. 80, § 31. 166 Mass. 399.

If the record of the board of health of a city recites that notice conformably to Pub. Stats., chap. 80, sects. 30, 31 (Rev. Laws, chap. 75, sect. 78), of a hearing on the proposed abatement of a nuisance was served upon "the owners of all land upon which it was necessary to enter, and the owners of all land benefited by the abatement of said nuisance, in person," an owner, although he has stood by and seen the work done without making any objections, and although he does not bring his petition for a writ of *certiorari* until the work has been completed at large expense, may show by parol evidence that the notice was not served upon him, provided that the question is not that of quashing the whole proceedings of the board in abating the nuisance on his land, but of simply quashing the assessment upon him. (Holmes, Knowlton and Barker, JJ., dissenting.)

Hall *v.* Staples and Others, 166 Mass. 399.

Section 79. At the time and place appointed therefor, the board shall hear the parties, and thereafter may, in its discretion, cause such nuisance to be abated by entering upon any land and by making such excavations, embankments and drains therein and under and across any streets and ways, as may be necessary; and shall also determine in what manner and at whose expense the improvements shall be kept in repair, shall estimate and award the damage sustained by, and the benefit accruing to, any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by the persons benefited thereby. The board shall forthwith give notice of its decision, in the manner required in the preceding section, to the parties to whom notice is required to be given by section seventy-seven and to the assessors of said city or town. The expense of making and keeping such improvements in repair shall be assessed by the assessors upon the persons benefited thereby, as ascertained by said decision, shall be included in their taxes, shall be a lien upon the land benefited thereby and shall be collected in the same manner as other taxes upon land. 1868, 160, § 5. P. S. 80, § 32. 135 Mass. 490.

Abatement of nuisance. Damages.

An assessment cannot be levied for expenses incurred by a board of health under the Statute of 1868, chap. 160 (Rev. Laws. chap. 75, sect. 75 *et seq.*), upon a person to whom notice of the hearing provided for in sect. 3 (Rev. Laws, chap. 75, sect. 77) is not given, although he has knowledge of the doing of the work whereby the expenses are incurred.

Grace *v.* Newton Board of Health, 135 Mass. 490.

It is no ground for a writ of *certiorari* to quash an assessment levied for expenses incurred under the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*), that the expenses were not assessed proportionally upon all persons benefited, or that items were included in the expenses which ought to have been excluded.

Grace *v.* Newton Board of Health, 135 Mass. 490.

If a board of health has given notice of a hearing under the Statute of 1868, chap. 160, sect. 3 (Rev. Laws, chap. 75, sect. 77), it need not give a new notice of its intention to make an assessment under sect. 5 (Rev. Laws, chap. 75, sect. 79).

Grace *v.* Newton Board of Health, 135 Mass. 490.

A report of a committee of the board of health of a city, upon the assessment of damages and benefits sustained by the abatement of a nuisance, under the Statute of 1868, chap. 160 (Rev. Laws, chap. 75, sect. 75 *et seq.*), was accompanied by orders drawn in accordance with the report, and by warrants upon the city treasurer for the collection of assessments. The record showed that the report was accepted and the orders and warrants adopted. *Held*, that the adoption of the report sufficiently appeared.

Grace *v.* Newton Board of Health, 135 Mass. 490.

Upon proceedings by the board of health pursuant to Pub. Stats., chap, 80, sects. 28-33 (Rev. Laws, chap. 75, sects. 75-82), for the abatement of a nuisance consisting of wet and spongy lands injurious to health, the measure of damages for land upon which it has been necessary to enter to abate the nuisance is the difference between its fair market value before the act of the board and such value afterwards.

Driscoll *v.* Taunton, 160 Mass. 486.

Upon a petition for the assessment of damages to land in consequence of proceedings pursuant to the Pub. Stats., chap. 80, sects. 28-33 (Rev. Laws, chap. 75, sects. 75-82), for the abatement of a nuisance consisting of wet and spongy lands injurious to health, any nuisance on the land upon which it was necessary to enter, in order to be chargeable to the city or town, must be the result of the act of the board of health, and, unless such act results in a nuisance, evidence of a subsequent nuisance is immaterial.

Driscoll *v.* Taunton, 160 Mass. 486.

For ruling as to cases in which a landowner may be estopped from claiming damages by reason of acts of board of health, see

Driscoll *v.* Taunton, 160 Mass. 486.

SECTION 80. A person entitled to notice under the provisions of section seventy-seven who is aggrieved by the decision of said board or of the commissioners who may be appointed under section eighty-three that the land described in the petition is a nuisance may appeal therefrom to the superior court, if, within twenty-four hours after notice of such decision, he gives notice in writing to said board of his intention so to do and within seven days after such notice presents a petition to the superior court stating his grievance and the action of said board thereon, and enters into such recognizance as said court shall order. The superior court may hear and determine such appeal, pending which all proceedings by the board of health relative to such nuisance shall be stayed. 1887, 338, § 2.

Appeal from adjudication of nuisance.

SECTION 81. Whoever is aggrieved by such decision in the award of damages or in the determination of benefits accrued or in the apportionment of the expense may, within three months after notice thereof, apply for a jury, first giving one month's notice in writing to the mayor and aldermen or selectmen of his intention so to do, and particularly specifying therein his objections to said decision. Such application for a jury shall otherwise be made in like manner and the proceedings thereon shall be the same as in case of land taken for laying out highways, except that at the trial the petitioner shall be confined to the objections specified in his notice. 1887, 338, § 3.

Appeal from assessment.

The fact that Pub. Stats., chap. 80, sect. 35 (Rev. Laws, chap. 75, sect. 81), provides that any person aggrieved by the decision of the board of health in its estimate and award of damages upon proceedings brought pursuant to Pub. Stats., chap. 80, sects. 28–33 (Rev. Laws, chap. 75, sects. 75–82), for the abatement of a nuisance, consisting of wet and spongy lands injurious to health, "may make complaint to the county commissioners for the county," does not prevent such person from resorting to the superior court under the provisions of Pub. Stats., chap. 49, sect. 105 (Rev. Laws, chap. 48, sect. 109). Driscoll *v.* Taunton, 160 Mass. 486.

SECTION 82. The board shall, within thirty days after any such abatement, make return of its doings to the city or town clerk who shall record them in the city or town records. 1868, 160, § 6. P. S. 80, § 33.

Board to make return.

SECTION 83. If the board unreasonably refuses or neglects to proceed in the matter of said petition, the petitioner may apply to the superior court which, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided. 1868, 160, § 7. P. S. 80, § 34.

Appointment of commissioners.

SECTION 84. Whoever is aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance may apply to the county commissioners, who may hear and determine such application and exercise in such case all the powers of such board. The applicant shall, within twenty-four hours after such neglect or refusal, file with said board a written notice to the adverse party of his intention so to apply and within seven days shall present a petition to one of the county commissioners, stating the grievances complained of and the action of the board of health thereon. 1866, 211, §§ 1, 2. P. S. 80, §§ 36, 37.

Application to county commissioners.

SECTION 85. Each commissioner, when acting under the provisions of the preceding section, shall tax three dollars a day for

time and five cents a mile for travel to and from the place of meeting, which shall be paid into the county treasury; and such costs shall in the first instance be paid by the applicant, and the commissioners may award that costs of the proceeding shall be paid by any party thereto.

Costs and expenses, how paid.

1866, 211, § 3. P. S. 80, § 38.

SECTION 86. The board of health of a town may grant permits for the removal of any nuisance, infected articles or sick person within the limits of its town.

Removal of infected articles, etc.

1816, 44, § 12. R. S. 21, § 15. G. S. 26, § 15. P. S. 80, § 39.

SECTION 87. If, upon the application of the board, it appears to a magistrate authorized to issue warrants that there is just cause to suspect that baggage, clothing, or goods, found within the town, are infected with any disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy or to any constable, require him to impress as many men as said magistrate may judge necessary to secure such baggage, clothing or goods, and to post said men as a guard over the house or place containing such articles to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

Warrant to secure infected articles, etc.

1751-2, 12, § 1. R. S. 21, § 20. 1877, 211, § 1.
1797, 16, § 5. G. S. 26, § 20. P. S. 80, § 44.

SECTION 88. The magistrate may, by the same warrant, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto or otherwise detained until, in the opinion of the board, they are freed from infection.

Warrant to take houses for safe-keeping of goods.

G. S. 26, § 21. 1877, 211, § 1. P. S. 80, § 45.

SECTION 89. The officers, in the execution of the warrant, may command aid and may break open any house, shop or other place mentioned in the warrant where such articles are found. Whoever, being commanded by said officers to assist in the execution of the warrant, neglects or refuses so to do, shall forfeit not more than ten dollars.

Officers may command aid.

P. S. 80, § 46.

SECTION 90. The expense of securing, transporting and purifying such articles, as fixed by the board, shall be paid by the owners or by the city or town, as the board may determine. For any article of furniture or wearing apparel ordered to be destroyed by an order of the board of health, the city or town may recompense the owner to an amount not exceeding fifty dollars.

Expense, how paid.

G. S. 26, § 23. P. S. 80, § 47. 1903, 306.

SMOKE NUISANCE.

Rev. Laws, 102.

SECTION 122. The emission, except by locomotive engines or by brick kilns, into the open air of dark smoke or dense gray smoke for more than five minutes continuously, or the emission, except as aforesaid, of such smoke during ninety minutes of any continuous period of twelve hours, within a quarter of a mile of a dwelling, is hereby declared a nuisance, unless such emission is under a permit which may be granted annually by the mayor and aldermen of cities or the selectmen of towns. Smoke nuisance.

1901, 427, §§ 1, 5, 9.

SECTION 123. Such permit shall be signed by the mayor or by a majority of the board of selectmen and by the city or town clerk, and be recorded in the office of said clerk. It shall name the person, firm or corporation to whom or to which it is granted, and definitely and clearly describe the location and limits of the premises to which it applies, and shall remain in force until the first day of May next after its date, unless sooner forfeited or rendered void. Notice of applications for such permit shall be published at the expense of the applicant in the manner prescribed by section fourteen of chapter one hundred relative to applications for liquor licenses. The board granting the permit may establish fees for its issue, not exceeding one dollar each, to be paid to the treasurer of the municipality. Permits.

1901, 427, §§ 5, 6, 8.

SECTION 124. If, before the expiration of the ten days following the publication of the notice, the owner of a dwelling within a quarter of a mile of the premises described therein gives written notice to the board having authority to grant the permit that he objects to the granting thereof, it shall not be granted, unless said board, after a public hearing of the persons interested, decides that no just ground for objection exists, or that the public good requires that it be granted; but the granting of a permit shall not prejudice any right of damages which a person may have under the laws of the commonwealth against the person receiving the permit. In case a permit is granted after objection is filed, and without a hearing as aforesaid, or without proper advertisement as herein provided, the owner of such dwelling may apply to the police, district or municipal court, or to a trial justice within whose jurisdiction the premises are situated, for a hearing in the case; and said court or trial justice, if it appears that said permit was granted without compliance with the provisions of this and the preceding section, shall revoke the permit, and notice of such revo- Objection to permit.

cation shall be sent to the board granting, and to the person receiving the permit. 1901, 427, § 7.

Enforcement of provisions.

SECTION 125. The mayor of a city or the selectmen of a town may, in January of each year, designate some proper person or persons who shall be charged with the enforcement of this section, the three preceding sections and the following section during the year in which they are appointed; but such designation shall be subject to change at any time. An officer so designated may apply to the supreme judicial court, or to the superior court, for an injunction to restrain the further operation of any furnace, steam boiler or boilers which are being operated in such a manner as to create a nuisance as above defined; and said court may after hearing the parties enjoin the further operation of such furnace, boiler or boilers. 1901, 427, §§ 3, 4.

Penalty.

SECTION 126. Whoever commits such nuisance as is defined in section one hundred and twenty-two, or suffers the same to be committed on any premises owned or occupied by him, or in any way participates in committing the same, shall be punished by a fine of not more than one hundred dollars for each week during any part of which such nuisance exists. 1901, 427, § 2.

Acceptance of provisions by city or town.

SECTION 127. The provisions of the five preceding sections shall not be operative in a city unless they shall be, or the corresponding provisions of earlier laws have been, accepted by a majority vote of the city council of the city, nor operative in a town unless they shall be accepted by a majority of the voters of the town voting thereon at an annual town meeting. 1901, 427, § 10.

OFFENSIVE TRADES.

Rev. Laws, 75.

Assignment of places for offensive trades.

SECTION 91. The board of health of a city or town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, injurious to their estates, dangerous to the public health or is attended by noisome and injurious odors, and may prohibit the exercise thereof within the limits of the city or town or in places not so assigned. Such assignments shall be entered in the records of the city or town, and may be revoked when the board shall think proper.

1692-3, 23, § 1.	R. S. 21, § 47.	16 Gray, 233.	116 Mass. 260.
1696, 13.	1855, 391, § 1.	8 Allen, 325.	125 Mass. 191.
1710-11, 8, § 1.	G. S. 26, § 52.	11 Allen, 398.	135 Mass. 526.
1785, 1, § 1.	P. S. 80, § 84.	97 Mass. 223.	151 Mass. 563.

So far as this section extends, the rules and course of proceeding under the common law are superseded, but in all other respects it continues in force

as before. If the board of health acts and assigns places in which any particular trade or employment may be carried on, such an assignment would undoubtedly legalize the occupation of any person conducting his business in that place, and he would then be liable to no process, suit or prosecution, other than those which are specially appointed and prescribed. But if no such assignment has been made, and the board, in the exercise of their discretion, have not seen fit to act at all, a remedy for injuries to the public or for violation of private rights by the permanent maintenance of offensive trades and employments must be found in the rules and principles of the common law. The statute, by leaving that body to act according to the discretion of its members, has imposed no duty upon them which they are imperatively bound to perform, and no means have been provided by a recourse to which, as by a complaint made to them, they can be compelled to exercise the power with which they are intrusted.

Commonwealth *v.* Rumford Chemical Works, 16 Gray, 231.

The board may pass an order prohibiting the exercise of an offensive trade, without having given previous notice to parties interested.

Belcher *v.* Farrar, 8 Allen, 327.

In the above case, Bigelow, C.J., says: "If, as preliminary to the exercise of any jurisdiction over the subject-matter, the selectmen were required to give notice to all persons exercising offensive trades or employments within the limits of the town, of their inten ion to prohibit the continuance of them, it would follow necessarily that such persons would have a right to appear and object, and ask for a hearing and trial on the question whether the use of their property was hateful or noxious, so as to fall within any of the classes contemplated by the statute. This would often lead to protracted examinations, which might occupy days or weeks. If, in the meantime, the alleged offensive and noisome trades might be carried on great injury to health might be occasioned; and it would be impossible to prevent the evils which it was the manifest object of the statute promptly to suppress."

It is questionable whether the prohibition of offensive trades is a proper subject of a by-law or ordinance, because that matter is specially provided for by statute; and to prohibit their exercise in any particular locality in a town or city by by-law or ordinance would interfere with the right of appeal to a jury which the statute secures.

Commonwealth *v.* Patch, 97 Mass. 223.

The keeping of swine cannot be considered a trade within the meaning of the law, and would be a proper subject of a by-law or ordinance.

Commonwealth *v.* Patch, 97 Mass. 223; but see 135 Mass. 526.

An order of the board under this section is not in the nature of an adjudication of a particular case, but of a general regulation of the trade or employment mentioned therein. It is not to be construed with technical strictness, but with the same liberality as all votes and proceedings of municipal bodies or officers who are not presumed to be versed in the forms of law; and every reasonable presumption is to be made in its favor. It need not state in direct terms that the trade which it prohibits is a nuisance. It is sufficient if the order clearly shows, that, in the opinion of the board, the exercise of such trade will be hurtful to the inhabitants, or injurious to the public health, or be attended by noisome and injurious odors.

Taunton *v.* Taylor, 116 Mass. 261.

A board of health of a town in 1881 made a regulation which provided that no swine should be kept in any place in a town, without a permit being first obtained from the board. On a complaint against a person for violation

of this regulation, it appeared that the defendant kept about a hundred and fifty swine, and had been engaged for years in the business of feeding offal to swine. *Held*, that such a keeping of swine was an "employment," and that the authority of the board to regulate the same was under the Pub. Stats., chap. 80, sect. 84 (Rev. Laws, chap. 75, sect. 91), and not under sect. 18 (Rev. Laws, chap. 75, sect. 65); that the defendant was entitled to notice under sect. 87 (Rev. Laws, chap. 75, sect. 94); and that a publication under sect. 19 (Rev. Laws, chap. 75, sect. 14) was not sufficient.

Commonwealth *v.* Young, 135 Mass. 526.

The following order of a board of health was held to be a valid exercise of the power conferred upon boards of health: —

"Ordered, that the exercise of the trade or employment of preparing tripe, manufacturing neat's-foot oil, tallow and glue stock, and the boiling and trying of bones, hoofs, heads, refuse, and partially decayed animal matter, and as a part of such trade or employment, the storing about the premises where such business is carried on, of putrid meats, bones, heads, legs, and the various other materials from which offensive smells emanate, which are used in such trade or employment, be and the same hereby is forbidden within the limits of the city of Taunton."

Taunton *v.* Taylor, 116 Mass. 261.

A board of health may regulate as well as prohibit the exercise of offensive trades.

Sawyer *v.* State Board of Health, 125 Mass. 195.

The same power by this section is given to the boards of health of towns and cities as is given by sect. 93, chap. 80, Pub. Stats. (Rev. Laws, chap. 75, sect. 109), to the state board of health. The only difference is this, that by sect. 93 (109) the state board is bound to give notice to a party, and allow him a hearing before it can pass an order of prohibition; but under this section the local boards may pass an order of prohibition without any previous notice.

Sawyer *v.* State Board of Health, 125 Mass. 191.

The board of health of a town may, under the Pub. Stats., chap. 80, sect. 84 (Rev. Laws, chap. 75, sect. 91), pass a qualified order forbidding the exercise of the employment of keeping swine within the town "without a permit in writing first obtained from the board of health."

Quincy *v.* Kennard, 151 Mass. 563.

Assignment of places for offensive trades, revocation of, by court.

SECTION 92. If a place or building so assigned becomes a nuisance by reason of offensive odors or exhalations therefrom, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the superior court may, on complaint of any person, revoke such assignment, prohibit such further use of such place or building and cause the nuisance to be removed or prevented.

1710-11, 8, § 2. 1785, 1, § 2. R. S. 21, § 48. G. S. 26, § 53. P. S. 80, § 85.

Damages.

SECTION 93. Whoever is injured in the comfort or enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

1799, 75, § 2. R. S. 21, § 49. G. S. 26, § 54. P. S. 80, § 86.

SECTION 94. Orders of prohibition which may be issued under the provisions of section ninety-one shall be served upon the occu-

pant or person having charge of the premises where such trade or employment is exercised. If he refuses or neglects for twenty-four hours thereafter to obey the same, he shall forfeit not less than fifty nor more than five hundred dollars, and the board shall take all necessary measures to prevent such exercise.

Orders of prohibition.

1855, 391, § 2. P. S. 80, § 87. 11 Allen, 398. 135 Mass. 526.
G. S. 26, § 55. 8 Allen, 325. 116 Mass. 262. 143 Mass. 113.

A notice ordered by the board and duly received is sufficiently served. It need not necessarily be served by a constable or other officer.

Winthrop *v.* Farrar, 11 Allen, 398.

The supreme judicial court has authority under its general jurisdiction as a court of equity to restrain by injunction the carrying on of an offensive trade which has been prohibited by a board of health. But the board must act in good faith towards the parties interested, and if by their action they have misled them and put them in a position to prevent their availing themselves of their right to appeal, and by reason thereof they have lost their opportunity to appeal, the court will refuse to enforce the orders of the board by a process in equity.

Winthrop *v.* Farrar, 11 Allen, 402.

A bill in equity to restrain a party from exercising an offensive trade or employment prohibited by the board of health of a city is properly brought in the name of the city and properly signed by the mayor.

Taunton *v.* Taylor, 116 Mass. 262.

SECTION 95. Whoever is aggrieved by an order passed under the provisions of section ninety-one or one hundred and nine may, within three days after the service of the order upon him, give written notice of appeal to the board and file a petition for a jury in the superior court in the county in which the premises affected are located, and, after notice to the board, may have a trial at the bar of the court in the same manner as other civil cases are tried by jury. If, by mistake of law or fact or by accident, he fails within said three days to apply as aforesaid, and if it appears to the court that such failure was caused by such mistake or accident, and that he has not, since the service of such order upon him, violated it, he may within thirty days after the service of the order upon him apply for a jury.

Appeal from order.

1855, 391, § 3. P. S. 80, § 88. 11 Allen, 398. 131 Mass. 197.
G. S. 26, § 56. 1883, 133. 116 Mass. 254. 135 Mass. 526.
1865, 263. 1889, 193, § 1. 125 Mass. 182, 190.

SECTION 96. Such trade or employment shall not be exercised contrary to the order while such proceedings are pending, unless specially authorized by said board, and if so specially authorized, all further proceedings by said board shall be stayed while such proceedings are pending. Upon any violation of the order, unless specially authorized as aforesaid, the proceeding shall forthwith be dismissed.

Trade not to be exercised meanwhile.

1855, 391, § 4. G. S. 26, § 57. P. S. 80, § 89. 1889, 193, § 1.

The statute giving to boards of health the power to forbid the exercise, within the limits of a town or city, or in any particular locality thereof, of any trade or employment which is a nuisance or hurtful to the inhabitants or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors or is otherwise injurious to their estates, and providing for an appeal, and that during the pendency of the appeal such trade or employment shall not be exercised contrary to the order, is within the authority of the legislature and constitutional.

Taunton *v.* Taylor, 116 Mass. 254.

The order of the board of health of a city under the Gen. Stats., chap. 26 (Rev. Laws, chap. 75), forbidding the exercise of an offensive trade in a city, is a *quasi* judicial act, and can be revised only in the manner provided in the statute; and it is not competent for the defendant in a suit in equity brought by the board of health to enjoin him from continuing an offensive trade, to prove that the trade is not a nuisance.

Taunton *v.* Taylor, 116 Mass. 254.

In Taunton *v.* Taylor, 116 Mass. 260, Gray, C.J., says: "To allow the offensive trade to be carried on until it had been decided by a jury to be a nuisance, and the question of law arising upon such a trial had been determined by the court, would defeat the purpose of the statute. It is a case in which private rights must be held subordinate to the public welfare, and falls within the strictest interpretation of the maxim, *Salus populi suprema lex.*

"The rights of any person to be affected by the order of prohibition are reasonably secured by requiring the order to be served upon him or the person in charge of his business, and by allowing him an appeal to a jury to be impanelled immediately without waiting for a regular term of court, and by whose verdict the order may be altered, annulled or affirmed."

Taunton *v.* Taylor, 116 Mass. 254, 260.

SECTION 97. The verdict may either alter, affirm or annul the order, and shall be returned to the court for acceptance; and if accepted, shall have the authority and effect of a valid order of the board, and may also be enforced by the court in equity.

Effect of verdict.

1855, 391, § 5. G. S. 26, § 58. P. S. 80, § 90. 1889, 193, § 2. 125 Mass. 194.

The following order was issued by the state board of health: —

COMMONWEALTH OF MASSACHUSETTS.

STATE BOARD OF HEALTH, BOSTON, April 5, 1876.

TO GEORGE A. SAWYER *of the town of Watertown, in the county of Middlesex.*

You are hereby notified, that at a meeting of the state board of health, held at Boston, in the county of Suffolk, on the third day of April, 1876, it was ordered, on the petition of W. H. Ingraham and four others, and after a hearing of the parties, that George A. Sawyer of Watertown be, and he hereby is, directed to discontinue the business of slaughtering and rendering on the premises now occupied by him, on and after the fifteenth day of May, 1876. And it is adjudged and determined by this board, that the premises are noxious and offensive, and that the public health and the public comfort and convenience require that the said George A. Sawyer be ordered as aforesaid, to cease and desist from carrying on the said business on the said premises, on and after the fifteenth day of May, 1876. And you are hereby directed to comply in all respects with the requirements of the said order, under penalty of what may follow thereon.

An appeal was taken to a jury of the superior court. The case was then tried in the superior court, and the jury returned the following verdict and special findings: —

The jury alter the order of the state board of health, dated April 5, 1876, as follows: That Mr. George A. Sawyer shall be permitted to continue the business of slaughtering animals on the premises now occupied by him in the town of Watertown, under the restrictions as per appended sheet.

1. Mr. George A. Sawyer shall be required to concrete the cellar under his slaughter-house, in concave form.
2. Mr. Sawyer shall not keep swine in or under his slaughter-house.
3. All offal and offensive matter shall be removed from the above premises before ten o'clock P.M. of the day of killing, in covered, water-tight boxes or tanks.
4. Said premises shall be kept at all times in a condition of neatness and cleanliness acceptable to the local board of health.

Held, that the several findings of the jury were sufficiently clear, precise, and definite in matters of form, and were proper in substance.

Sawyer *v.* State Board of Health, 125 Mass. 196.

Where an appeal is taken and trial had before a sheriff's jury, if the defendant is dissatisfied with the verdict, his remedy is, by application to the superior court, to set it aside, and, if aggrieved by any ruling of that court in matter of law, by bringing the question before the supreme court on exceptions or appeal.

Taunton *v.* Taylor, 116 Mass. 262.

Costs.

SECTION 98. If the order is affirmed by the verdict, the board shall recover costs to the use of the town; if it is annulled and the petitioner has not been specially authorized by said board to exercise such trade or employment during the proceedings, he shall recover damages and costs against the town; if it is annulled and the petitioner has been specially authorized as aforesaid, or if it is altered, he shall not recover damages, and the court may render judgment for costs in its discretion.

1855, 391, § 6. G. S. 26, § 59. P. S. 80, § 91. 1889, 193, § 1.

Slaughter-houses to be licensed.

SECTION 99. The proprietor of every slaughter-house, canning, salting, smoking or rendering establishment, and of every establishment used for the manufacture of sausages or chopped meat of any kind, who is engaged in the slaughter of neat cattle, sheep or swine, the meat or product of which is to be sold or used for food, shall annually in April apply for a license to the mayor and aldermen of the city, the selectmen of the town or, in a town having a population of more than five thousand, to the board of health, if any, in which such slaughter-house or establishment is located. The application shall be in writing, signed and sworn to by one or more of the owners or by one or more of the persons carrying on such business, or, if a corporation, by some authorized officer thereof, shall state the name and address of all the owners or persons carrying on said business, the location of the slaughter-house or establishment in which said busi-

ness is to be conducted, the estimated number of neat cattle, sheep or swine to be slaughtered per week, the days of the week upon which they are to be slaughtered and the nature of the products thereof to be sold or used for food.

1894, 491, § 17. 1895, 496, § 3. 1897, 428, § 2. 109 Mass. 315, 320.

SECTION 100. The mayor and aldermen, selectmen, or such other officers as they shall designate, or in a town having a population of more than five thousand, the board of health, if any, may annually issue licenses to carry on the business of slaughtering neat cattle, sheep or swine to applicants therefor. The fee for each license shall be one dollar. The license shall name the persons licensed to conduct such business, and the building or establishment in which it is to be carried on, and it shall continue in force until the first day of May of the year next ensuing, unless sooner forfeited or rendered void. A record shall be kept by the board or officers authorized to issue licenses of all applications for licenses under the provisions of the preceding section and of all licenses issued, which shall be evidence of the issue of any such license. Such board or officers shall annually, on or before the first day of June, send to the board of cattle commissioners a copy of every application made to them under the provisions of the preceding section and their action thereon, and a list of all persons with their addresses, who although engaged in the business named in the preceding section on the last day of the previous April, failed to make application for a license.

Issue of licenses. Fee. Record.

1894, 491, § 18. 1895, 496, § 4. 1897, 428, § 2.

SECTION 101. A licensee under the provisions of the preceding section shall not slaughter any such animals, or cause them to be slaughtered at such slaughter-house or establishment, on any days other than those specified in the application for such license, except in the presence of a member of the board of health or of an inspector appointed therefor by said board; but he may at any time change the days for slaughtering such animals, by giving at least seven days' written notice thereof to the board or officer authorized to issue licenses, who shall immediately give written notice of such change to such inspector of such city or town. 1894, 491, § 19. 1895, 496, § 5.

Slaughtering of cattle.

SECTION 102. Such inspector as has been appointed by the board of health shall be present at all licensed slaughter-houses or establishments upon the days designated for slaughter by the licensee, as provided in the preceding section, and there carefully examine the carcasses of all animals at the time of slaughter. Such inspection shall be made in such manner

Duties and powers of inspectors.

and under such rules and regulations as the board of cattle commissioners may determine and direct. If, in the opinion of an inspector, any carcass, or any meat or product thereof is diseased, corrupted, unwholesome or unfit for food, he shall seize it and cause it to be destroyed, as provided in section seventy of chapter fifty-six.

1894, 491, § 20. 1895, 496, § 6.

(Sections 103 and 104 were repealed by chapter 312, Acts of 1902.)

Section 105. The provisions of the four preceding sections shall not apply to a person not engaged in such business, who, upon his own premises and not in a slaughter-house, slaughters his own neat cattle, sheep or swine, but the carcass of any such animals shall be inspected by an inspector at the time of slaughter, unless said animal is less than six months old or has been duly inspected under the provisions of chapter ninety, within six months prior to such slaughter and a certificate of health has been delivered to the owner or person in charge thereof.

Private slaughter-houses.

1894, 491, § 21. 1895, 496, § 7. 1902, 312, § 2.

Section 106. Whoever violates the provisions of sections one hundred, one hundred and one, one hundred and two and one hundred and five, or, being engaged in the business of slaughtering neat cattle, sheep or swine, slaughters the same, without a license, or knowingly authorizes or causes the same to be slaughtered with intent to sell the meat or product thereof for food, or, having such license, slaughters or knowingly authorizes or causes to be slaughtered any neat cattle, sheep or swine without causing the carcass thereof to be inspected as provided in section one hundred and two, or whoever sells or authorizes or causes to be sold any carcass or the meat or product thereof knowing that such carcass has not been inspected according to the provisions of sections one hundred and two and one hundred and five, or whoever slaughters or knowingly authorizes or causes to be slaughtered any neat cattle, sheep or swine upon his own premises other than a slaughter-house or establishment mentioned in section ninety-nine, without causing the carcass of such animal to be inspected, except as provided in the preceding section, or whoever sells, or authorizes or causes to be sold, the carcass or any meat or product thereof of any such animal slaughtered upon his own premises, knowing that the same has not been inspected as provided in the preceding section, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. 1894, 491, § 22. 1895, 496, § 8.

Penalties.

Conviction renders license void.

SECTION 107. A conviction under the provisions of the preceding section of any person licensed under the provisions of section one hundred shall render his license void, and no new license shall be granted to him for the balance of the term. 1894, 491, § 23.

Slaughter-houses, etc., as to.

SECTION 108. Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent and permission of the mayor and aldermen of the city and of the common council if there be such a board, or of the selectmen or, in any town having a population of more than five thousand, of the board of health, if any, of the town in which the building or premises are situated shall forfeit not more than two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time. The provisions of this section shall not apply to any building or premises which were occupied or used for said trades or occupations on the eighth day of May in the year eighteen hundred and seventy-one; but no person who used or occupied any building or premises on said date for said trades or occupations shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen, and of the common council if there is such a board, or the selectmen, or, in any town having a population of more than five thousand, of the board of health, if any.

1692-3, 23, § 1.	1785, 1, § 1.	1874, 308.	1897, 428, § 2.
1696, 13.	R. S. 21, § 47.	P. S. 80, § 92.	109 Mass. 315, 320.
1710-11, 8, § 1.	1871, 167, § 1.	1893, 106.	114 Mass. 353.

The legislature in the exercise of its police power may prohibit the use of any building in cities or towns of a certain population for carrying on, without permission of the mayor and aldermen or selectmen, a trade necessary and lawful in itself, but which in its ordinary exercise may become a public nuisance.

Watertown *v.* Mayo, 109 Mass. 318.

Where a person before the passage of the Statute of 1871, chap. 167, used and occupied a building on his own land as a slaughter-house, and therein slaughtered cattle, sheep and other animals, as a business, and after the passage of the statute he continued the business of slaughtering in said building, when the same caught fire accidentally, and was consumed, and afterwards he immediately rebuilt said slaughter-house on the same site, and continued his business of slaughtering cattle, sheep and other animals therein, and it further appeared that the new building was different from the old one in its construction and arrangement, but was not larger or more

extensive in size or capacity, the court held that the right to continue, without license, the same business in the building was not forfeited, and the building was within the exception stated in the section.

Watertown *v.* Sawyer, 109 Mass. 320.

The manifest purpose of the legislature is to protect the business already established, in the place where it is carried on, not the identical building which happened to be standing for its use when the law was enacted.

Watertown *v.* Sawyer, 109 Mass. 320.

A person was the owner of land and buildings used for a long period for a melting and rendering establishment and for the manufacture of soap in Somerville, a city containing more than four thousand inhabitants. In this rendering business he made use of two open kettles; but the building in which they were placed did not cover the entire lot of land. In the year 1872 he tore down a part of his buildings, which were old and dilapidated, and, without consent or permission from the mayor and aldermen of Somerville, erected a new building, standing partly on land covered by the old buildings and partly on land that had not been so covered. The new building covered about one-third as much space as the old buildings, and was two stories high with a French roof, while the old buildings were, for the most part, only one story in height. The owner's purpose was to place in that part of the new building formerly covered by the old one a covered kettle or tank for melting and rendering purposes, and to use the residue of the building for storage and other purposes connected with his business, and to tear down and discontinue the use of the old buildings and of the two open kettles. The capacity of the proposed new tank for rendering purposes would not exceed, and might not equal, that of the two open kettles. The old buildings were standing and in use, except so far as displaced by the new building.

Upon these facts the court held that it did not appear that the defendant had enlarged the premises occupied by him for the business in question, or that he had increased or proposed to increase the business, and refused to issue an injunction restraining him from so enlargiug and extending them.

Somerville *v.* O'Neil, 114 Mass. 353.

SECTION 109. If any buildings or premises are so occupied or used, the state board of health shall, upon application, appoint a time and place for hearing the parties and, after due notice thereof to the party against whom the application is made and a hearing, may, if in its judgment the public health, comfort or convenience so require, order any person to desist from further carrying on said trades or occupations in such buildings or premises; and whoever thereafter continues so to occupy or use such buildings or premises shall forfeit not more than two hundred dollars for every month of such occupancy and use, and in like proportion for a shorter time.

Prohibition of offensive trades by State Board of Health.

1710-11, 8, § 2. R. S. 21, § 48. 1874, 308. 1886, 101, § 4.
1785, 1, § 2. 1871, 167, § 2. P. S. 80, § 93. 125 Mass. 182, 190.

Precisely the same power is given by sect. 84, chap. 80 of the Public Statutes (Rev. Laws, chap. 75, § 91) to the local boards of health, as by this section is given to the state board. The only difference is this, that the

state board is bound to give notice to a party, and allow him a hearing, before it can pass an order of prohibition; but the local boards may pass an order of prohibition without any previous notice.

Sawyer *v.* State Board of Health, 125 Mass. 191.

The same right to appeal to a jury from an order of the state board exists as is provided for an appeal from an order of a local board under sect. 91, Rev. Laws.

Sawyer *v.* State Board of Health, 125 Mass. 191,

Restraint of offensive trades.

SECTION 110. The superior court shall have jurisdiction in equity to restrain the unauthorized occupancy, use or extension of any building or premises which were occupied or used for the trades or occupations aforesaid, and to enforce the orders of the state board of health issued under the provisions of the preceding section; but the provisions of this and the two preceding sections shall not impair any other remedies against nuisances. 1871, 167, § 3. 1874, 290. P. S. 80, §§ 94, 95.

A bill in equity to restrain by injunction a person from occupying and using a building for carrying on the business of slaughtering cattle, sheep or other animals, without the written consent of the selectmen, is properly brought in the name of the inhabitants of the town.

Watertown *v.* Mayo, 109 Mass. 315.
See also Taunton *v.* Taylor, 116 Mass. 254.

Killing and rendering of horses, etc.

SECTION 111. A person, partnership or corporation engaged in or desiring to engage in the business of killing horses, or in the carrying on of a melting or rendering establishment, shall annually, in March, apply for a license to the board of health of the city or town in which such business is to be carried on. The application shall be in writing and signed by the person or persons who desire to carry on such business, or, if the applicant is a corporation, by a duly authorized officer thereof. It shall state the names in full and the addresses of all the persons who desire to carry on such business, or, if a corporation is the applicant, the names of all the officers thereof and the street or other place where the business is to be conducted. The board of health of a city or town may grant such licenses after it is satisfied that the applicants have a suitable building and plant in a situation approved by said board and that they have suitable trucks or wagons for the removal of dead animals. The license shall state the name of the licensee, the situation of the building or establishment in which the business is to be carried on, and shall continue in force until the first day of April of the year next ensuing, unless sooner revoked. The board of health shall keep a record of such licenses which are granted by it, and shall notify the board of cattle commissioners of the granting of any such license, giving the name and address of the licensee. The fee for a license shall not exceed

one dollar, and a license may be revoked at any time by the board of health. Licensees shall report to the board of cattle commissioners, in such form and at such times as it may order, every animal received by them which is found to be infected with a contagious disease. No unlicensed person shall carry on the business of killing horses or of melting and rendering. So much of section twenty-five of chapter ninety as provides that no person shall knowingly sell an animal with a contagious disease shall not apply to any person who sells such animal to a licensee under the provisions of this section, if such animal is to be killed or rendered at the establishment of such licensee. Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment. 1901, 134.

SWINE-SLAUGHTERING ASSOCIATIONS.

Rev. Laws, 110.

SECTION 12. For the purpose of buying and slaughtering swine, and of melting and rendering and pork packing, three or more persons may associate themselves, with a capital of not less than one hundred thousand nor more than five hundred thousand dollars. 1874, 295, § 1. P. S. 107, § 1.

Formation of corporations for swine-slaughtering, etc.

SECTION 72. A corporation which is organized for the purposes set forth in section twelve may take, by purchase or otherwise, and hold such parcel of land, not exceeding one hundred acres in extent and situated in such place as the state board of health may determine to be suitable for said business; and shall, within sixty days after the time of taking any land otherwise than by purchase, cause to be signed by its president and filed in the registry of deeds for the county or district in which said land lies a description thereof as certain as is required in a common conveyance of land and a statement of the purpose for which it is taken; but no land shall be so taken without the approval in writing of the mayor and aldermen of the city or of the selectmen of the town in which it lies. 1874, 295, § 2. P. S. 107, § 2. 1886, 101, § 4.

Slaughtering associations may take land approved by state board of health.

SECTION 73. Such corporation shall be liable to pay all damages sustained by any persons in their property by the taking of any land for the purposes described in section twelve. Whoever sustains damages as aforesaid, and does not agree with such corporation upon the amount to be paid therefor, may, within one year after the taking of said land, apply by petition to the superior court in the county in which said

Liability for damages. Trial by jury.

land is situated for the assessment of damages. The clerk shall thereupon issue a summons to the corporation, returnable on the return day next following the expiration of fourteen days at least after the issuing of said summons, to appear and answer to the said petition. Said summons shall be served fourteen days at least before the return day by leaving a copy with the clerk of the corporation. The amount of such damages shall be assessed by a jury unless the parties in writing waive their right to a jury; and the verdict of the jury, being accepted and recorded by the court, or the award of the court, if a trial by jury is waived, shall be final and judgment shall be rendered and execution issued thereon. The petitioner shall recover costs if the amount of said judgment exceeds the amount tendered to him for his damage before the filing of said petition; otherwise the corporation shall recover its costs.

1874, 295, § 3. P. S. 107, § 3.

Buildings, etc.; regulation by state board of health.

SECTION 74. Such corporation shall build upon such land suitable buildings for the slaughtering of swine and for melting and rendering, and all necessary stables and out-buildings. No such building shall be erected until the plans thereof, with all details of construction, have been submitted to and approved by said state board or by a person designated by it to examine them. The corporation shall carry on all its business in accordance with such regulations as said state board shall, from time to time, establish and furnish in writing to the clerk of the corporation; and for each violation of said regulations it shall forfeit not less than twenty nor more than five hundred dollars.

1874, 295, § 4. P. S. 107, § 4.

Slaughtering business, how conducted.

SECTION 75. Such corporation may, subject to the provisions of the three preceding sections, manufacture and sell any of the usual products of said slaughtering and melting and rendering business, or may lease, or permit other persons to use, its buildings or parts thereof on such terms as may be agreed upon. Each member of the corporation may slaughter swine on said premises, subject to such regulations and tariff of prices as the corporation may, by vote at any regular meeting, establish, and to the regulations of said state board. Whoever, being engaged in business on the premises of such corporation, violates any regulation of said state board, shall forfeit not less than twenty nor more than five hundred dollars. 1874, 295, § 4. P. S. 107, § 5.

WATER SUPPLY AND SEWERAGE.

Rev. Laws, 75.

SECTION 112. The state board of health shall have the general oversight and care of all inland waters and of all streams and ponds used by any city, town or public institution or by any water or ice company in this commonwealth as sources of water supply and of all springs, streams and water courses tributary thereto. It shall be provided with maps, plans and documents suitable for such purposes and shall keep records of all its transactions relative thereto.

Supervision of inland waters.

1886, 274, § 1. 1888, 375, § 1. 1890, 441, § 1. 1897, 510, § 1.

See decision, Stone *v.* Heath, 179 Mass. 385, p. 23.

SECTION 113. Said board may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent the pollution and to secure the sanitary protection, of all such waters as are used as sources of water supply.

Examination of water supply.

1886, 274, § 2. 1888, 375, § 2. 1890, 441, § 1. 1897, 510, § 1.

SECTION 114. The publication of an order, rule or regulation made by the board under the provisions of the preceding section or section one hundred and eighteen in a newspaper of the city or town in which such order, rule or regulation is to take effect or, if no newspaper is published in such city or town, the posting of a copy of such order, rule or regulation in a public place in such city or town shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed and recorded with a copy of the notice, in the office of the clerk of such city or town shall be admitted as evidence of the time at which, and the place and manner in which the notice was given. 1899, 308.

Effect of publication of notice.

SECTION 115. Said board shall annually, on or before the tenth day of January, make a report to the general court of its doings for the preceding year, recommend measures for the prevention of the pollution of such waters and for the removal of polluting substances in order to protect and develop the rights and property of the commonwealth therein and to protect the public health, and recommend any legislation or plans for systems of main sewers necessary for the preservation of the

Report and recommendations.

public health and for the purification and prevention of pollution of the ponds, streams and inland waters of the commonwealth. It shall also give notice to the attorney-general of any violation of law relative to the pollution of water supplies and inland waters.

1886, 274, §§ 1-3. 1888, 375, §§ 1-3.

SECTION 116. Said board may appoint, employ and fix the compensation of such agents, clerks, servants, engineers and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water supply and of the rules and regulations of said board to be enforced. 1886, 274, §§ 1, 2. 1888, 375, §§ 1, 2. 1897, 510, § 2.

Agents and assistants.

SECTION 117. Said board shall consult with and advise the authorities of cities and towns and persons having, or about to have, systems of water supply, drainage or sewerage as to the most appropriate source of water supply, and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns or persons which may be affected thereby. It shall also consult with and advise persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. No person shall be required to bear the expense of such consultation, advice or experiments. Cities, towns and persons shall submit to said board for its advice their proposed system of water supply or of the disposal of drainage or sewage, and all petitions to the general court for authority to introduce a system of water supply, drainage or sewerage shall be accompanied by a copy of the recommendation and advice of said board thereon. In this section the term "drainage" means rainfall, surface and subsoil water only and "sewage" means domestic and manufacturing filth and refuse.

Advice as to methods.

1886, 274, §§ 2, 3. 1888, 375, §§ 2-4.

SECTION 118. Upon petition to said board by the mayor of a city or the selectmen of a town, the managing board or officer of any public institution, or by a board of water commissioners, or the president of a water or ice company, stating that manure, excrement, garbage, sewage or any other matter pollutes or tends to pollute the waters of any stream, pond, spring or water course used by such city, town, institution or company as a source of water supply, the board shall appoint a time and place within the county where the nuisance or pollution is alleged

Removal of causes of pollution.

to exist for a hearing, and after notice thereof to parties interested and a hearing, if in its judgment the public health so requires, shall, by an order served upon the party causing or permitting such pollution, prohibit the deposit, keeping or discharge of any such cause of pollution, and shall order him to desist therefrom and to remove any such cause of pollution; but the board shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. Said board shall not prohibit the use of any structure which was in existence on the eleventh day of June in the year eighteen hundred and ninety-seven upon a complaint made by the board of water commissioners of any city or town or by any water or ice company unless such board of water commissioners or company files with the state board a vote of its city council, selectmen or company, respectively, that such city, town or company will at its own expense make such changes in said structure or its location as said board shall deem expedient. Such vote shall be binding on such city, town or company. All damages caused by such changes shall be paid by such city, town or company; and if the parties cannot agree thereon, the damages shall, on petition of either party, filed within one year after such changes are made, be assessed by a jury in the superior court for the county where such structure is located.

1890, 441, §§ 2, 7. 1897, 510, §§ 3, 9.

SECTION 119. Whoever is aggrieved by an order passed under the provisions of the preceding section may appeal therefrom in the manner provided in sections ninety-five and ninety-seven; but such notice as the court shall order shall also be given to the board of water commissioners and mayor of the city or chairman of the selectmen of the town or president or other officer of the water or ice company interested in such order. While the appeal is pending the order of the board shall be complied with, unless otherwise authorized by the board.

Appeal from order.

1890, 441, § 3. 1897, 510, § 4. 131 Mass. 197.

Notice must be given to the state board of health of an appeal from an order of that board, under the Statute of 1878, chap. 183, sect. 6.
Pebbles *v.* City of Boston, 131 Mass. 197.

SECTION 120. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the state board of health or of any party interested, to enforce its orders, or the orders, rules and regulations of said board of health, and to restrain the use or occupation of the premises or such portion thereof as said board may specify, on which said material is deposited or kept, or such other cause of

Enforcement of law.

pollution exists, until the orders, rules and regulations of said board have been complied with. 1890, 441, § 4. 1897, 510, § 5.

Entry on premises.

SECTION 121. The agents and servants of said board may enter any building, structure or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations and orders aforesaid are obeyed. Their compensation for services rendered in connection with proceedings under the provisions of section one hundred and eighteen shall be fixed by the board and shall in the first instance be paid by the commonwealth; but the whole amount so paid shall, at the end of each year, be justly and equitably apportioned by the tax commissioner between such cities, towns or companies as, during said year, have instituted said proceedings, and may be recovered in an action by the treasurer and receiver general, with interest from the date of the demand.

1897, 510, § 2.

Penalties.

SECTION 122. Whoever violates any rule, regulation or order made under the provisions of section one hundred and thirteen or one hundred and eighteen shall be punished for each offence by a fine of not more than five hundred dollars, to the use of the commonwealth, or by imprisonment for not more than one year, or by both such fine and imprisonment.

1890, 441, § 5. 1897, 510, § 6.

Application of preceding sections.

SECTION 123. The provisions of the eleven preceding sections shall not apply to the Merrimac or Connecticut rivers, nor to so much of the Concord river as lies within the limits of the city of Lowell, nor to springs, streams, ponds or water courses over which the metropolitan water board has control. 1890, 441, § 6. 1897, 510, § 7. 1895, 488.

Pollution of sources of water supply forbidden.

SECTION 124. No sewage, drainage, refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a city, town, public institution or water company for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any such stream or pond, or upon their banks if any filter basin so used is there situated, or into any feeders of such pond or stream within twenty miles above the point where such supply is taken.

1878, 183, §§ 1, 2. P. S. 80, § 96. 1896, 252, § 1.

Since the passage of the Statute of 1878, chap. 183, forbidding the discharge into any river or stream, used as a source of water supply by any city

or town, within twenty miles above the point where such supply is taken, of any sewage, drainage, refuse or polluting matter of such quality or amount as to be deleterious to health, a person cannot acquire by prescription the right so to foul a stream within such distance, as against a city or town using the stream as its source of water supply.

Brookline *v.* Mackintosh, 133 Mass. 215.

See also Harris *v.* Mackintosh, 133 Mass. 228.

A landlord is liable for the acts of his tenant in polluting the waters of a brook, which is a natural watercourse running through the premises, by discharging sink water therein, if the building leased is adapted and intended to be used in the manner complained of, whether he retains control over the house or not.

In an action for polluting the waters of a brook, which is a natural water course, if the injury to the plaintiff resulting from the defendant's acts can be specifically ascertained, it is no defence that the plaintiff has also polluted the brook.

A land owner may collect the surface water of his land, and the water drawn from wells therein, into an artificial stream, and discharge this stream into a natural water course running through his land, provided that this is done in the reasonable use of his land, and that the volume of water is not increased beyond the natural capacity of the water course to discharge it, and the land of an adjoining owner is not thereby overflowed and materially injured.

Jackman *v.* Arlington Mills, 137 Mass. 277.

SECTION 125. The provisions of the preceding section shall not destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; nor shall it be applicable to the Merrimac or Connecticut rivers, or to so much of the Concord river as lies within the limits of the city of Lowell.

Prescriptive rights unaffected. Application limited.

1878, 183, § 3. P. S. 80, § 97. 133 Mass. 215.

SECTION 126. The supreme judicial court or the superior court, upon application of the mayor of a city, the selectmen of a town, managing board or officer of a public institution, or a water or ice company interested, shall have jurisdiction in equity to enjoin the violation of the provisions of section one hundred and twenty-four.

Injunction against pollution of water supply.

1884, 154, § 1. 1896, 252, § 2. 133 Mass. 228. 139 Mass. 183.

If a pond and the waters of a stream running into the pond are taken for the purpose of supplying a city with pure water, it is no defence to a petition in equity, under the Statute of 1884, chap. 154, for an injunction to restrain a person from polluting the stream, that the city has, by means of a dike, prevented the waters of the stream from running into and polluting the waters of the pond.

Martin *v.* Gleason, 139 Mass. 183.

SECTION 127. Whoever wilfully and maliciously defiles or corrupts any spring or other source of water, or reservoir, or destroys or injures any pipe, conductor of water or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year. 1843, 65, § 2. G. S. 106, § 6. P. S. 208, § 7.

Penalty for corrupting spring, etc.

SECTION 128. Whoever wilfully deposits excrement or foul or decaying matter in water which is used for the purpose of domestic water supply, or upon the shore thereof within five rods of the water, shall be punished by a fine of not more than fifty dollars, or by imprisonment for not more than thirty days; and a police officer or constable of a city or town in which such water is wholly or partially situated, acting within the limits of his city or town, and any executive officer or agent of a water board, board of water commissioners, public institution or water company furnishing water or ice for domestic purposes, acting upon the premises of such board, institution or company and not more than five rods from the water, may without a warrant arrest any person found in the act of violating the provisions of this section, and detain him until a complaint can be made against him therefor. But the provisions of this section shall not interfere with the sewage of a city, town or public institution, or prevent the enriching of land for agricultural purposes by the owner or occupant thereof. 1879, 224. P. S. 208, § 8.

Penalty for corrupting sources of water supply.

SECTION 129. Whoever bathes in a pond, stream or reservoir, the water of which is used for the purpose of domestic water supply for a city or town, shall be punished by a fine of not more than ten dollars. 1884, 172.

Penalty for bathing in public ponds.

SECTION 130. Whoever, not being engaged in cutting or harvesting ice, or in hauling logs, wood or lumber, drives any animal on the ice of a pond or stream which is used for the purpose of domestic water supply for a city or town shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than thirty days. 1880, 185. P. S. 80, §§ 101, 102.

Penalty for driving on ice of pond used for water supply.

Rev. Laws, 213.

SECTION 10. A corporation which, being engaged in selling or distributing water, refuses or neglects to furnish or supply water to or for any building or premises for the reason that a water bill remains unpaid by a previous owner or occupant of said building or premises shall, unless the person applying for water is in arrears to such corporation for water

Refusal of water supply.

previously furnished to or for said building or premises, or to or for any other building or premises, be punished by a fine of not less than ten nor more than twenty dollars. 1898, 168. 171 Mass. 329.

Acts of 1902, 322.

AN ACT TO REQUIRE MANUFACTURING ESTABLISHMENTS TO SUPPLY THEIR EMPLOYEES WITH PURE DRINKING WATER DURING WORKING HOURS.

SECTION 1. All manufacturing establishments in this commonwealth shall provide fresh and pure drinking water, to which their employees shall have access during working hours.

Manufacturing establishments to provide water for employees.

SECTION 2. Any corporation, association, firm or person owning, in whole or in part, managing, controlling or superintending any manufacturing establishment in which the provision of this act is violated shall, upon complaint of the board of health of the city or town, or of the selectmen of the town in which the establishment is located, be liable to a fine of one hundred dollars for each offence.

Penalty. How enforced.

See also under general powers of state board of health, Rev. Laws, chap. 75, sect. 4, requirement to examine main sewer outlets, p. 3.

SEWERS AND DRAINS.

Rev. Laws, 49.

SECTION 1. The mayor and aldermen of a city and the sewer commissioners, selectmen or road commissioners of a town may lay, make, repair and maintain all such main drains or common sewers as they adjudge necessary for the public convenience or the public health, in public or private ways or in the land of any person, and may take land which may be necessary therefor. Main drains and common sewers so laid shall be the property of the city or town. Cities and towns may with the approval of the state board of health, after a public hearing by said board of all parties interested, of which notice shall be given by publication in one or more newspapers, purchase or take land within their respective limits for the purification and disposal of sewage.

Cities and towns may lay drains or sewers.

1841, 115, §§ 1, 6.
1857, 225, § 1.
G. S. 48, §§ 1, 3.
1869, 111, § 1.
1871. 158, § 2.
1873, 51.
P. S. 50, § 1.
1890, 124.
1893, 304, § 2; 423, § 24.
4 Allen, 41.
8 Allen, 127.
104 Mass. 13.
122 Mass. 255, 359.
124 Mass. 564.
126 Mass. 431.
128 Mass. 396.
134 Mass. 476.
146 Mass. 298, 336.
150 Mass. 12.
151 Mass. 184.
159 Mass. 324.
163 Mass. 303.

SECTION 30. The board of health of a city or town may require the owner or lessee of any building upon land abutting on a public or private way in which there is a public sewer to connect the same therewith by a sufficient drain, and such owner or lessee who fails or neglects to comply with such order shall be punished by a fine of not more than two hundred dollars. 1890, 132. 160 Mass. 282. 163 Mass. 240.

Connection with public sewer.

On a complaint under Statute of 1890, chap. 132 (Rev. Laws, chap. 49, sect. 30), against the defendant for maintaining a building not connected with a public sewer, although required to connect it by the board of health, it appeared that the city council, under its charter, ordered the committee on drainage "to extend section 3 of the eastern intercepting sewer from its present terminus through C and New C streets to W Avenue"; that the sewer was laid through private land below the point where it passed the defendant's house, without other authority than the statute and the landowner's unrecorded waiver under seal of damages, and that it was laid through the defendant's land at a place above his own house, and the defendant neither had licensed it nor had been paid for it. *Held*, that the order was sufficiently definite, and implied an adjudication of necessity; that the sewer was lawful below the defendant's house, and that it was immaterial that the waiver was not recorded; that if the sewer was unlawful where it crossed the land above, it was not made unlawful throughout; that the failure to keep the plan of the sewer in the city clerk's office had no bearing on the proceedings; and that a short answer to most of the defendant's objections was that they could be taken only by *certiorari*.

Commonwealth *v.* Abbott, 160 Mass. 282.

SECTION 32. If the board of health of a city or town making such appropriation shall order land abutting upon a public or private street, court or passage way in which a public sewer has been laid to be connected with such sewer, or if the owner of such land shall make to the board or officer authorized to lay sewers application to connect his land with a public sewer, such board or officer authorized to lay sewers shall make such connection and shall assess the cost thereof upon such land. 1899, 319, § 2. 1900, 112.

Connection, by whom made.

SECTION 35. If the city council of a city or a town accepts the provisions of this section or has accepted the corresponding provisions of earlier laws, the board of health may require the owner or lessee of an estate which drains into a private drain in a public or private way to put such drain in good repair and condition, If he fails to comply with said order within ten days after notice thereof, he shall be punished by a fine of not more than twenty dollars for every day during which such neglect continues. 1893, 312.

Repair of private drains.

Acts of 1903, 383.

SECTION 1. The owner of every estate abutting on a public way in which a drain, namely, a conduit for surface or storm water and such waters as shall be specified by the state board of health; and a sewer, namely, a conduit for all other waters and for sewage, all such other waters to be considered sewage, shall have been provided by a city or town, and the owner of any other estate, using any such drain or sewer, shall make or change the plumbing of his estate so that the waters shall be kept separate from the sewage; and shall, as directed by the officer having charge of the maintenance of sewers in such city or town, make connections for, and conduct, the waters into the drain and the sewage into the sewer.

Surface water to be separated from sewage.

Sections 2 and 3 of this act relate to the metropolitan sewer.

SECTION 4. The supreme judicial court shall have jurisdiction in equity to enforce the provisions of this act.

Supreme court may enforce act.

Rev. Laws, 25.

SECTION 14. A town may make contracts: —

To contribute to the cost of building, by any other city or town situated in the water shed of *its* water supply, a sewer or system of sewers to aid in protecting such water supply from pollution. R. S. 15, § 11. G. S. 18, § 9. P. S. 27, § 9. 1888, 160. 167 Mass. 115.

Towns may make contracts for cost of building certain sewers.

SHELL FISH IN POLLUTED WATERS.

Rev. Laws, 91.

SECTION 113. The state board of health may examine all complaints which may be brought to its notice relative to the contamination of tidal waters and flats in this commonwealth by sewage or other causes, may determine, as nearly as may be, the bounds of such contamination, and, if necessary, mark such bounds. It may also, in writing, request the commissioners on fisheries and game to prohibit the taking from such contaminated waters and flats of any oysters, clams, quahaugs and scallops. Upon receipt of such request, said commissioners shall prohibit the taking of such shell fish from such contaminated waters or flats for such period of time as the state board of health may prescribe. 1901, 138, §§ 1, 2.

Taking of shell fish from contaminated waters regulated.

SECTION 114. Whoever takes any oysters, clams, quahaugs or scallops from tidal waters or flats from which the taking has been prohibited as provided in the preceding section shall forfeit not less than five nor more than ten dollars for the first offence, and not less than fifty nor more than one hundred

Penalties.

dollars for each subsequent offence; but such penalties shall not be incurred until one week after the commissioners on fisheries and game shall have caused notice of such prohibition, with a description, or the bounds, of the tidal waters or flats to which such prohibition applies, to be published in a newspaper published in the town or county in which or adjacent to which the tidal waters or flats to which such prohibition applies are situated. 1901, 138, § 3.

QUARANTINE.

Rev. Laws, 75.

SECTION 131. A town may establish a quarantine ground in a suitable place within its own limits; or, with the previous consent of another town, within the limits thereof. Two or more towns may in like manner join in establishing such quarantine ground for their common use.

Town may establish a quarantine ground.

R. S. 21, §§ 27, 28. G. S. 26, §§ 32, 33. P. S. 80, §§ 62, 63.

SECTION 132. The board of health in a seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make quarantine regulations for the health and safety of the inhabitants, which shall apply to all persons, goods and effects arriving in such vessels and to all persons who, for any purpose, may visit the same. Whoever violates any such regulation shall forfeit not less than five nor more than five hundred dollars.

Quarantine vessels.

1816, 44, § 6. G. S. 26, §§ 34-36. 98 Mass. 443. 144 Mass. 523.
R. S. 21, §§ 29-31. P. S. 80, §§ 64-66. 137 Mass. 558.

SECTION 133. Such board may at any time cause a vessel arriving in port, if such vessel or its cargo is, in its opinion, foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees or persons in possession of the same; and may cause all persons arriving in or for any purpose visiting such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under its orders.

Quarantine of suspected vessels.

1816, 44, § 6. R. S. 21, § 32. G. S. 26, § 37. P. S. 80, § 67.

SECTION 134. Any person belonging to or arriving in a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails which may endanger the public health, who refuses to make answer on oath, to be administered by any member of the board, to questions relating to such infection or distemper asked by

Penalty for refusal to answer on oath.

the board of health of the town to which such vessel may come shall forfeit not more than two hundred dollars.

1797, 16, § 9. R. S. 21, § 33. G. S. 26, § 38. P. S. 80, § 68.

SECTION 135. All expenses incurred on account of any person, vessel or goods which are under quarantine regulations shall be paid by the owner of such vessel. Quarantine expenses, how paid.

1816, 44, § 6. G. S. 26, § 39. 1893, 79. 144 Mass. 523.
R. S. 21, § 34. P. S. 80, § 69. 120 Mass. 96.

The owner of a vessel under quarantine regulations is not liable for the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which was under their care.

Provincetown *v.* Smith, 120 Mass. 96.

In an action of replevin of certain rags imported into a city by the plaintiff, and retained by the defendant under a claim of lien for the charges for disinfecting the rags, it is not open to the plaintiff to object that the answer, which is demurred to, does not show that the disinfection was accomplished to the satisfaction of the board of health of the city in accordance with a regulation of the board, but only shows that the defendant's process of disinfection was one satisfactory to the board, if such objection is not specifically assigned as a cause of demurrer.

In an action of replevin of certain rags imported into a city by the plaintiff, and retained by the defendant under a claim of lien for the charges for disinfecting the rags, it is not open to the plaintiff to contend that the provisions of the Pub. Stats., chap. 80, sects. 64, 67 (Rev. Laws, chap. 75, sects. 132, 133), contemplate a special exercise of the judgment of the board of health as to each cargo arriving, and not the passage of a general regulation, if the answer, which is demurred to, shows that there was a distinct order for the disinfection of the rags in question.

A regulation of the board of health of a city, passed under the authority conferred by the Statute of 1816, chap. 44, and the Pub. Stats., chap. 80 (Rev. Laws, chap. 75), and ordering "that on and after this date all rags arriving at this port from any foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board, and in a manner satisfactory to this board," even if the order was formal only, and was passed without any inquiry into the character of the rags or their special history, is not unreasonable.

A regulation of the board of health of a city, passed under authority conferred by the Statute of 1816, chap. 44, and the Pub. Stats., chap. 80 (Rev. Laws, chap. 75), and ordering "that on and after this date all rags arriving at this port from a foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board, and in a manner satisfactory to this board," is not void as infringing the power of Congress "to regulate commerce with foreign nations."

Under the Statute of 1816, chap. 44, and the Pub. Stats., chap. 80, sects. 18, 64, 65, 67, 69 (Rev. Laws, chap. 75, sects. 65, 132, 133 and 135), the board of health of a city may pass a regulation without a hearing, ordering rags imported into the city to be disinfected, and the expense of such disinfection to be borne by the owner of the rags; and it is not competent for the owner of the rags, as a defence to the claim for charges for disinfection, to show that the rags did not require disinfection, and could not have transmitted disease, if they were of the class concerning which the regulation was made.

Under a regulation of the board of health of a city, made in pursuance of the authority conferred by the Statute of 1816, chap. 44, and the Pub. Stats., chap. 80, sects. 18, 64, 65, 67, 69 (Rev. Laws, chap. 75, sects. 65, 132, 133 and 135), ordering rags imported into the city to be disinfected at the expense of the owner, the work of disinfection may be delegated by the board to a third person, who is entitled to claim a lien upon the rags for his charges.

Train *v.* Boston Disinfecting Company, 144 Mass. 523.

VACCINATION.

Children to be vaccinated.

SECTION 136. A parent or guardian who neglects to cause his child or ward to be vaccinated before the child or ward attains the age of two years, except as provided in section one hundred and thirty-nine, shall forfeit five dollars for every year during which such neglect continues.

1855, 414, §§ 1, 3. G. S. 26, § 27. P. S. 80, § 51. 1894, 515, § 1.

Vaccination, board of health to enforce.

SECTION 137. The board of health of a city or town if, in its opinion, it is necessary for the public health or safety, shall require and enforce the vaccination and re-vaccination of all the inhabitants thereof and shall provide them with the means of free vaccination. Whoever refuses or neglects to comply with such requirement shall forfeit five dollars.

1809, 117, § 2. 1855, 414, §§ 3, 4. P. S. 80, §§ 52, 53. 1902, 190, § 1.
R. S. 21, § 45. G. S. 26, §§ 28, 29. 1894, 515, §§ 3, 4.

The Rev. Laws, chap. 75, sect. 137, authorizing the board of health of a city or town to require the vaccination of all its inhabitants, and imposing a fine of five dollars for a violation of such requirement, is constitutional.

A defendant charged with violation of a requirement of the board of health of a city or town under Rev. Laws, chap. 75, sect. 137, that all its inhabitants shall be vaccinated, cannot introduce evidence to show what vaccination consists of, this being a matter of common knowledge, or of the grounds of his refusal to comply with the requirement, this involving a matter of opinion, and also being immaterial, or of the alleged injuries or dangerous effects of vaccination, the legislature being the judges of what the welfare of the people demands.

The exceptions were overruled.

Commonwealth *v.* Pear, 183 Mass. 242, 249.
Commonwealth *v.* Jacobson, 183 Mass. 242, 249.
Commonwealth *v.* Mugford, 183 Mass. 242, 249.

Inmates of factories, etc., to be vaccinated.

SECTION 138. The board of health of a city or town in which any incorporated manufacturing company, almshouse, reform or industrial school, hospital or other establishment where the poor or sick are received, prison, jail or house of correction or any institution which is supported or aided by the commonwealth is situated may, if it decides that it is necessary for the health of the inmates or for the public safety, require the authorities of said establishment or institution, at the expense thereof, to cause all said inmates to be vaccinated.

1855, 414, §§ 5, 6. G. S. 26, § 30. P. S. 80, § 54. 1894, 515, § 5. 1898, 433, § 23.

SECTION 139. Any person over twenty-one years of age who presents a certificate signed by the register of a probate court that he is under guardianship shall not be subject to the provisions of section one hundred and thirty-seven; and any child who presents a certificate, signed by a registered physician designated by the parent or guardian, that the physician has at the time of giving the certificate personally examined the child and that he is of the opinion that the physical condition of the child is such that his health will be endangered by vaccination shall not, while such condition continues, be subject to the provisions of section six of chapter forty-four of the Revised Laws or of the three preceding sections of this chapter; and the parent or guardian of such child shall not be liable to the penalties imposed by section one hundred and thirty-six of this chapter. 1894, 515, § 2. 1902, 190, § 2.

Exemptions.

Rev. Laws, 44.

SECTION 6. A child who has not been vaccinated shall not be admitted to a public school except upon presentation of a certificate signed by a regular practising physician that he is not a fit subject for vaccination.* A child who is a member of a household in which a person is ill with smallpox, diphtheria, scarlet fever or measles, or of a household exposed to such contagion from another household as aforesaid, shall not attend any public school during such illness or until the teacher of the school has been furnished with a certificate from the board of health of the city or town, or from the attending physician of such person, stating that, in a case of smallpox, diphtheria or scarlet fever at least two weeks, and in a case of measles, at least three days, have elapsed since the recovery, removal or death of such person, and that danger of conveying such disease by such child has passed.

Vaccination of children. Exclusion of pupils in household having a contagious disease.

1855, 414, § 2. G. S. 41, § 8. P. S. 47, § 9. 1884, 64. 1885, 198. 1894, 498, §§ 9, 10. 1898, 496, § 11.

GENERAL PROVISIONS.

Rev. Laws, 75.

SECTION 140. The provisions of this chapter shall apply to cities so far as consistent with their several charters.

G. S. 26, § 60. P. S. 80, § 106.

Chapter extends to cities.

SECTION 141. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the board of health of a city or town, to enforce the orders of said board relative to the public health, and the provisions of sections thirty-six and thirty-seven of chapter one

Enforcement of provisions of chapter.

* See Acts of 1902, chap. 190, sect. 2.

hundred and fifty-nine shall apply to such cases. But a jury may be summoned under the provisions of said sections if there is no sitting of the court within one month after the issues have been framed. 1893, 460, §§ 1, 2. 1899, 143.

CONTAGIOUS DISEASES OF DOMESTIC ANIMALS.

Rev. Laws, 90.

SECTION 11. The board of health of a city or town, any member or agent thereof or any other person who has knowledge of or reason to suspect the existence of any contagious disease among any domestic animals in this commonwealth, or that any domestic animal is affected with such contagious disease, whether such knowledge is obtained by personal examination or otherwise, shall immediately give notice thereof in writing to the board of cattle commissioners or to any of its members, agents or inspectors. Whoever fails to give such notice shall be punished by a fine of not more than one hundred dollars; but no such notice shall be required in the city of Boston relative to glanders, farcy or rabies, which shall be cared for by the board of health of said city. Upon the receipt of such notice, the board shall inspect or cause its authorized agent to inspect any such animals, and if upon such inspection said board or agent suspects or has reason to believe that contagion exists, it or he shall proceed according to the provisions of sections eighteen to twenty-one, inclusive.

Notice to board of contagious diseases among animals.

1860, 219, § 9; 221, § 5. 1878, 24. 1879, 178. P. S. 90, §§ 9, 15. 1885, 148, §§ 1, 2. 1887, 252, §§ 6, 7. 1894, 491, §§ 29, 30. 1899, 408, §§ 14, 15.

CEMETERY AND CREMATORY CORPORATIONS.

Rev. Laws, 78.

SECTION 1. Five or more persons who are desirous of procuring, establishing and preparing a cemetery, or who are the majority in interest of the proprietors of an existing cemetery, may organize as a corporation in the manner provided in chapter one hundred and twenty-three; but such corporation shall not sell nor impair the right of any proprietor of an existing cemetery. 1841, 114, § 1. 1852, 56, §§ 1, 2.

Cemetery corporations, organization.

G. S. 28, § 1. P. S. 82, § 1. 103 Mass. 104. 168 Mass. 97.

SECTION 6. Such corporation* may cremate bodies of the dead, and may provide the necessary buildings and appliances therefor and for the disposition of the ashes of the dead on any land within its cemetery which the state board of health determines is suitable for that purpose, and such buildings and appliances shall be a part of the cemetery and be dedicated to the

Cremation.

* Meaning any corporation organized for cemetery purposes as described in chap. 78, sect. 1, Rev. Laws.

burial of the dead, and shall be held by said corporations subject to the duties, and with the privileges and immunities, which they now have under general or special laws. 1898, 437, § 1.

Crematory corporations.

SECTION 7. Five or more persons may form a corporation in the manner provided in chapter one hundred and ten, with a capital of not less than six thousand nor more than fifty thousand dollars, divided into shares of a par value of either ten or fifty dollars, for the purpose of providing the necessary appliances for the disposal by cremation of the bodies of the dead; and they shall have the same powers and privileges, and be subject to the provisions of said chapter, except as hereinafter provided. 1885, 265, § 1.

Crematory corporations may hold real estate.

SECTION 8. Such corporation may acquire by gift, devise or purchase, and hold in fee simple to an amount not exceeding fifty thousand dollars, land which is necessary and appropriate for its purposes and situated in such place as the state board of health may determine to be suitable. 1885, 265, § 2.

By-laws and regulations.

SECTION 9. Cemetery and crematory corporations may, subject to the approval of said board, make by-laws and regulations consistent with law for the reception and cremation of bodies of the dead and for the disposition of the ashes thereof, and shall conduct their business in accordance with such regulations as said board shall establish and furnish in writing to the clerk of the corporation. For each violation of the regulations of said board they shall forfeit not less than twenty nor more than five hundred dollars. Such corporation shall not erect, occupy or use any building for the purpose of cremation until the location and plans thereof with all details of construction have been submitted to and approved by said board or by some person designated by it. 1885, 265, §§ 2, 3. 1898, 437, § 2.

USE OF CEMETERIES.

Lots indivisible but inheritable.

SECTION 26. Lots in cemeteries incorporated under the provisions of section one, tombs in public cemeteries in cities, and lots and tombs in public cemeteries in towns, shall be held indivisible, and upon the decease of a proprietor of such lot, the title thereto shall vest in his heirs at law or devisees subject to the following limitations and conditions: — If he leaves a widow and children they shall have the possession, care and control of said lot or tomb in common during her life. If he leaves a widow and no children, she shall have such possession, care and control during her life. If he leaves children and no widow, they shall have in common the possession, care and control of such

lots or tombs during their joint lives, and the survivor of them during his life. The persons in possession, care and control of such lots or tombs may erect a monument and make other permanent improvements thereon. The widow shall have a right of permanent interment for her own body in such lot or tomb, but it may be removed therefrom to some other family lot or tomb with the consent of her heirs. If two or more persons are entitled to the possession, care and control of such lot or tomb, they shall designate in writing to the clerk of the corporation, or if it is a tomb or lot in a public cemetery, to the board of cemetery commissioners, if any, or to the city or town clerk, which of their number shall represent the lot; and in default of such designation, the board of trustees or directors of the corporation, the board of cemetery commissioners, if any, or the board of health if such lots or tombs are in public cemeteries in cities or towns, shall enter of record which of said persons shall represent the lot during such default. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

1841, 114, § 5. G. S. 28, § 3. 1877, 182, § 4. P. S. 82, §§ 3, 4. 1885, 302. 1892, 165, § 1.

SECTION 27. Before entering of record the name of any person to represent such lot or tomb, the board of cemetery commissioners, if any, or the board of health of a town shall hear the parties entitled to the control thereof at such time and place as it shall have previously appointed by a notice published in a newspaper, if any, of the town; otherwise, by posting a copy in a public place therein. 1892, 165, § 2.

Hearing as to representation.

SECTION 30. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same lies. For every interment in violation of the provisions of this section in a city or town in which the notice prescribed in the following section has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars. 1855, 257, §§ 2–4. G. S. 28, §§ 5–11. P. S. 82, §§ 18, 21. 99 Mass. 281. 109 Mass. 1, 21. 118 Mass. 355.

Private land not to be used for burial, except, etc.

See Meagher *v.* Driscoll, 99 Mass. 281.
Woodlawn Cemetery *v.* Everett, 118 Mass. 354.

SECTION 31 Boards of health may make regulations concerning burial grounds and interments within their cities and towns; may impose penalties not exceeding one hundred dollars for a breach of such regulations; may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; and

Regulations by boards of health.

may close any tomb, burial ground, cemetery or other place of burial within the city or town for such time as they consider necessary for the protection of the public health. Notice of such regulations shall be given by publishing them in a newspaper, if any, of the city or town; otherwise, by posting a copy in a public place therein. Such publication shall be notice to all persons.

R. S. 21, §§ 7, 8. G. S. 28, §§ 6, 7. 1885, 278, § 1. 8 Cush. 68.
1855, 257, §§ 5, 6. P. S. 82, §§ 19, 20. 16 Pick. 121. 13 Allen, 546.

The powers given to boards of health are large and general to make regulations for the interment of the dead and respecting burying-grounds.

Withington *v.* Harvard, 8 Cush. 68.

This section is not confined in its operation to acts done within the burial grounds. The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial.

That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through the public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent.

Commonwealth *v.* Goodrich, 13 Allen, 546.
cf. Austin *v.* Murray, 16 Pick. 121.
Commonwealth *v.* Parks, 155 Mass. 531, 533.

The board of health of a city may establish a regulation prohibiting any person, unless appointed an undertaker or otherwise authorized by the board of health, from moving from any house or other place in the city to any place of burial the body of any deceased person, and making it the duty of undertakers to attend funerals when required, and to collect and pay over the burial fees, and requiring, further, each undertaker to give bonds in the sum of two hundred dollars for the faithful performance of his duties.

The refusal or neglect of a person appointed an undertaker to give the bond required by the regulation would justify the revocation of his appointment without any previous notice to him.

Commonwealth *v.* Goodrich, 13 Allen, 546.

Notice of closing of tombs.

SECTION 32. Before a tomb, burial ground or cemetery is closed by order of the board of health for more than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if there are so many, of the owners of such burial ground or cemetery, and notice shall be published for at least two successive weeks preceding such hearing in two newspapers if so many are published in the county.

1855, 257, § 9. G. S. 28, § 8. P. S. 82, § 22.

Appeal from order of board.

SECTION 33. The owner of a tomb who is aggrieved by the order of the board of health closing a tomb, burial ground or cemetery may, within six months after the date thereof, appeal therefrom to the superior court, first giving written notice to the board fourteen days before the entry of

such appeal; but the order of the board shall remain in force until the appeal has been determined.

1855, 257, § 7. G. S. 28, § 9. P. S. 82, § 23.

Trial. Costs.

SECTION 34. Appeals shall be tried before a jury, and if the jury find that the tomb, burial ground or cemetery so closed was not a nuisance or injurious to the public health at the time of the order and that the closing thereof was not necessary for the protection of the public health, the court shall rescind such order so far as it affects such tomb, burial ground or cemetery, and the appellant may recover the costs of the appeal from the city or town in which the tomb, burial ground or cemetery was situated. If the order is sustained, the board of health shall recover double costs, to the use of the city or town.

1855, 257, § 7. G. S. 28, § 10. P. S. 82, § 24. 1885, 278, § 2.

Rev. Laws, 212.

Injuring or defacing tombs, etc.

SECTION 66. Whoever wilfully destroys, mutilates, defaces, injures or removes a tomb, monument, gravestone or other structure or thing which is placed or designed for a memorial of the dead, or a fence, railing, curb or other thing which is intended for the protection or ornament of a tomb, monument, gravestone or other structure before mentioned or of an enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks or injures a tree, shrub or plant placed or being within such enclosure, or wantonly or maliciously disturbs the contents of a tomb or a grave, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the jail or house of correction for not more than three years.

1834, 187, § 2. G. S. 165, § 39. P. S. 207, § 49.
R. S. 130, § 20. 1879, 39. 100 Mass. 181.

A land owner may lawfully build on his land, without regard to the effect of the structure in excluding surface water which otherwise would flow from lands adjoining, and it is immaterial that the adjoining land is a burial ground.

The erection of a structure on land of the builder to exclude surface water which otherwise would flow from an adjoining burial ground is not a violation of the provisions of the Gen. Stats., chap. 28, sect. 12, and chap. 165, sect. 39 (Rev. Laws, chap. 212, sect. 66), for the protection of places of burial from injury or desecration.

Bates *v.* Smith, 100 Mass. 181.

Desecration of burial ground.

SECTION 67. Whoever wrongfully, and by any act not included in the provisions of the preceding section, destroys, injures or removes a building, fence, railing or other thing lawfully erected in or around a place of burial or cemetery, or a tree, shrub or plant within its limits, or wrongfully injures a walk or path, or places rubbish or offensive matter or

commits a nuisance therein, or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purposes of burial shall be sufficient evidence of title.

1841, 114, § 6. G. S. 28, § 12. 2 Allen, 512. 100 Mass. 181.
1855, 257, § 8. P. S. 207, § 50. 7 Allen, 299.

An ancient burial ground, which for sixty years has been separated by a fence from the adjoining land, and used occasionally for burials until the present time, may be described as a public burial ground in an indictment for destroying trees in a place of burial, under Gen. Stats., chap. 28, sect. 12 (Rev. Laws, chap. 212, sect. 67), although it can only be reached by a way, which has always been used for the purpose, over an adjoining private estate, of which it was originally a part, and the owners of which built and have maintained the fence for their own convenience, and have depastured the burial ground, cut the trees upon it and cultivated parts of it at their pleasure, under a claim of right, and no one else has exercised or claimed any control over the same until the town in which it lies assumed the charge thereof within three years.

Cutting trees upon a public burial ground for purposes of private profit, without consent of the public authorities having charge of it, is a violation of the Gen. Stats., chap. 28, sect. 12 (Rev. Laws, chap. 212, sect. 67), which provides a penalty for destroying trees within the limits of a place of burial, although the person who cuts them is the owner of the fee of the land, and honestly believes that his acts are lawful.

Commonwealth *v.* Viall, 2 Allen, 512.

If an indictment for wrongfully desecrating and disfiguring a public burying ground contains an accurate description of it by metes and bounds, the proof must correspond with the averment; and it is not sufficient to prove that a part of the lot described was a public burying ground, although the acts complained of were committed upon that part.

A place may be shown to be a public burying ground, in the trial of an indictment for wrongfully desecrating and disfiguring it, by evidence of use and occupation for the purposes of burial by others than the owners of the soil, and as of right; and if it has once acquired that character, it will not cease to have it by mere disuse.

It is no defence to an indictment for wrongfully desecrating and disfiguring a public burying ground to show that the defendant was the owner of the fee of small lots within it, under titles derived from various grantees to whom they had been conveyed, "to be used for burial ground;" and evidence to show such ownership is inadmissible.

Commonwealth *v.* Wellington, 7 Allen, 299.

Rev. Laws, 78.

SECTION 37. The body of a deceased person shall not be cremated within forty-eight hours after his decease unless death was caused by a contagious or infectious disease, and it shall not be received or cremated by any corporation organized under the provisions of section seven or the corresponding provisions of earlier laws until its officers have received the certificate or burial permit required by law before burial and a cer-

Cremation regulated.

tificate from the medical examiner of the district within which the death occurred that he has viewed the body and made personal inquiry into the cause and manner of death, and is of opinion that no further examination or judicial inquiry concerning the same is necessary. 1885, 265, § 4. 1898, 437, § 2.

SECTION 38. No undertaker or other person shall bury a human body in a city or town, or remove therefrom a human body which has not been buried, except as provided in the following section, until he has received a permit from the board of health or its agent appointed to issue such permits, or if there is no such board, from the clerk of the city or town in which the person died; and no undertaker or other person shall exhume a human body and remove it from a city or town, or from one cemetery to another, until he has received a permit from the board of health or its agent aforesaid or from the clerk of the city or town in which the body is buried. No such permit shall be issued until there shall have been delivered to such board, agent or clerk, as the case may be, a satisfactory written statement containing the facts required by law to be returned and recorded, which statement, in case of an original interment, shall be accompanied by a satisfactory certificate of the attending physician, if any, as required by law, or in lieu thereof a certificate as hereinafter provided. If there is no attending physician, or if, for sufficient reasons, his certificate cannot be obtained early enough for the purpose, or is insufficient, the chairman of the board of health, if a physician, or any physician employed by said board or by the selectmen for the purpose, shall upon application make such certificate as is required of the attending physician. If death is caused by violence, the medical examiner only shall make such certificate. The board of health or its agent, upon receipt of such statement and certificate, shall forthwith countersign and transmit it to the clerk of the city or town for registration. The person to whom the permit is so given and the physician who certifies to the cause of death shall thereafter furnish for registration any other necessary information which can be obtained as to the deceased, or as to the manner or cause of the death, which the clerk or registrar may require.

Burial permits.

1878, 174. P. S. 32, § 5. 1888, 306, § 2. 1893, 263, § 2. 1897, 437, § 1.

SECTION 39. No undertaker or other person shall bury in a city or town a human body or the ashes thereof which have been brought into this commonwealth until he has received a permit so to do from the board of health or its agent appointed to issue such permits, or if there is no such board, from the clerk of the city or town in which the body is to be buried or the funeral is to be held, or from a person appointed to

Burial of bodies brought into commonwealth.

have the care of the cemetery or burial ground in which the interment is made, if a record is kept of the names of all persons buried therein, or from a duly appointed superintendent of burials in such city or town who keeps a record of interments. Such permit shall not be issued until the undertaker or other person has delivered a certificate to said board, agent, clerk, superintendent or person having such care, giving the name of the deceased, his age as nearly as can be ascertained, the cause of death, the name of the city or town in which he last resided or from which the body was brought, or, if the death occurred at sea, the name of the vessel upon which it occurred, and any other facts required for record which could be obtained with reasonable exertion. The board of health or its agent, or the superintendent or person having such care, shall, upon receipt of such certificate, forthwith countersign and transmit it to the city or town clerk; and if the deceased was a resident of said city or town, the clerk shall record the same in the books kept for recording deaths; but if the deceased was at the time of his death a resident of any other city or town within this commonwealth said clerk shall forthwith forward to the clerk thereof a copy of such certificate, who shall record the same. 1897, 437, § 2.

Certificates requisite to burial.

SECTION 40. No person having the care of a cemetery or burial ground shall permit a human body to be buried therein, or such body or the ashes thereof to be removed therefrom, until the permit for such burial or removal has been delivered to him, nor permit the ashes of a human body to be buried therein until there has been delivered to him a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented. 1897, 437, § 3.

Same subject.

SECTION 41. An undertaker shall not bury the ashes of a human body until he has received from the person having the charge of the crematory a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented. 1897, 437, § 4.

Penalty.

SECTION 42. Whoever violates any of the provisions of the four preceding sections shall forfeit not more than fifty dollars. 1897, 437, § 5.

Transportation of dead bodies regulated.

SECTION 43. No common carrier or other person shall convey or cause to be conveyed, through or from any city or town in this commonwealth, the body of any person who has died of smallpox, scarlet fever, diphtheria or typhus fever until such body has been so encased and prepared as to preclude any danger of contagion or infection by its transportation;

and no city or town clerk, or clerk or agent of the board of health, shall give a permit for the removal of such body until he has received from the board of health of the city or from the selectmen of the town in which the death occurred a certificate stating the cause of death, and that said body has been prepared in the manner prescribed in this section, which certificate shall be delivered to the agent or person who receives the body. Whoever violates the provisions of this section shall forfeit not more than twenty-five dollars.

1883, 124, § 2. 1887, 335. 1897, 437, § 6.

SECTION 44. The boards of health of cities and towns shall annually, on or before the first day of May, license a suitable number of undertakers who can read and write the English language. Such license shall be issued upon such terms and conditions as the board of health may prescribe, and may be revoked at any time by the board if its terms or conditions or any requirements of law relative thereto have been violated by the undertaker. An undertaker who has been so licensed may act in any city or town.

Undertaker to be licensed.

1872, 275. P. S. 32, § 6. 1897, 437, § 7.

PUBLIC BATHS.

Rev. Laws, 25.

SECTION 20. A town which accepts the provisions of this and the following section, or has accepted the corresponding provisions of earlier laws, by a two-thirds vote at an annual meeting, may purchase or lease land, and erect, alter, enlarge, repair and improve buildings for public baths and wash-houses, either with or without open drying grounds, and may make open bathing places, provide them with the requisite furniture, fittings and conveniences, provide instruction in swimming, and may raise and appropriate money therefor.

Public baths, etc.

1874, 214, § 1, 3. P. S. 27, § 13. 1898, 125, § 2. 137 Mass. 175.

SECTION 21. Such town may establish rates for the use of such baths and wash-houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make regulations for the management thereof and for the use thereof by non-residents of said town. 1874, 214, § 2. P. S. 27, § 14. 1898, 125, § 1.

Regulations for government of public baths.

PUBLIC SCHOOLS.

Rev. Laws, 42.

SECTION 1. . . . Public schools . . . shall give instruction in . . . physiology and hygiene. . . . In each of the subjects of physiology and hygiene, special instruction as to the effects of alcoholic drinks and of stimulants and narcotics on the human system shall be taught as a regular branch of study to all pupils in all schools which are supported wholly or partly by public money, except schools which are maintained solely for instruction in particular branches.

Public schools. Teaching of physiology, hygiene and effects of alcohol.

1850, 229. 1857, 206, § 1. 1858, 5. 1859, 263. G. S. 38, § 1. P. S. 44, § 1. 1885, 332. 1898, 496, § 1.

For other sanitary laws relating to schools and scholars, see page 17, notification of contagious diseases to school committee, chap. 75, sect. 51; see page 61, exclusion of unvaccinated children and other children from infected houses from school, chap. 44, sect. 6; see pages 74, 75, inspection of school houses, chap. 104, sects. 22–25.

COLOR-BLINDNESS.

Rev. Laws, 111.

SECTION 221. A railroad corporation shall not employ any person or keep him in its employ in a position which requires the employee to distinguish form or color signals, unless he has been examined for color-blindness or other defective sight by a competent person employed by the corporation and has received a certificate that he is not disqualified for such position by color-blindness or other defective sight. A railroad corporation which violates the provisions of this section shall forfeit one hundred dollars. 1881, 194. P. S. 112, § 179. 1883, 125.

Color-blindness, examination for.

FACTORIES, WORKSHOPS AND PUBLIC BUILDINGS.

Rev. Laws, 106.

SECTION 47. Every factory in which five or more persons are employed, and every factory, workshop, mercantile or other establishment or office in which two or more children, under eighteen years of age or women are employed, shall be kept clean and free from effluvia arising from any drain, privy or nuisance, and shall be provided, within reasonable access, with a sufficient number of proper water closets, earth closets or privies; and wherever two or more males and two or more females are employed together, a sufficient number of separate water closets, earth closets or privies shall be provided for the use of each sex, and plainly so designated; and no person shall be allowed to use a closet or privy which is provided for persons of the other sex. 1887, 103, §§ 1, 2. 1888, 305. 1894, 508, § 33.

Sanitary provisions for factories, workshops, etc.

SECTION 48. The owner, lessee or occupant of any premises which are used as described in the preceding section shall make the changes necessary to conform thereto. If such changes are made upon the order of an inspector of factories and public buildings by the occupant or lessee of the premises, he may, within thirty days after the completion thereof, bring an action against any other person who has an interest in such premises, and may recover such proportion of the expense of making such changes as the court adjudges should justly and equitably be borne by the defendant.

Occupant may recover expense of changes, etc.

1888, 305. 1894, 508, § 34.

SECTION 49. If it appears to an inspector of factories and public buildings that any act, neglect or fault in relation to any drain, water closet, earth closet, privy, ashpit, water supply, nuisance or other matter in a factory or workshop included under the provisions of section forty-seven, is punishable or remediable under the provisions of chapter seventy-five or any other law relative to the preservation of the public health, but not under the provisions of this chapter, he shall give notice in writing thereof to the board of health of the city or town in which such factory or workshop is situated, and such board of health shall thereupon inquire into the subject of the notice and enforce the laws relative thereto. 1887, 103, § 3. 1894, 508, § 35.

Notice of defective sanitary arrangements.

SECTION 50. A criminal prosecution shall not be instituted against a person for a violation of the provisions of sections forty-seven and forty-eight until four weeks after notice in writing by an inspector of factories and public buildings of the changes necessary to be made to comply with the provisions of said sections has been sent by mail or delivered to such person, nor if such changes shall have been made in accordance with such notice. A notice shall be sufficient under the provisions of this section if given to one member of a firm, or to the clerk, cashier, secretary, agent or any other officer who has charge of the business of a corporation, or to its attorney; and in case of a foreign corporation, to the officer who has the charge of such factory or workshop; and such officer shall be personally liable for the amount of any fine if a judgment against the corporation is returned unsatisfied.

Criminal prosecution for violation of certain sections.

1887, 103, § 4. 1894, 508, § 36.

SECTION 51. A factory in which five or more persons and a workshop in which five or more women or young persons are employed shall, while work is carried on therein, be so ventilated that the air shall not become so impure as to be injurious to the health of the persons employed

Factories, etc., to be properly ventilated.

therein and so that all gases, vapors, dust or other impurities injurious to health, which are generated in the course of the manufacturing process or handicraft carried on therein shall, so far as practicable, be rendered harmless. 1887, 173, § 1. 1894, 508, § 37.

Inspectors to enforce ventilation.

SECTION 52. If, in a workshop or factory which is within the provisions of the preceding section, any process is carried on by which dust is caused which may be inhaled to an injurious extent by the persons employed therein, and it appears to an inspector of factories and public buildings that such inhalation would be substantially diminished without unreasonable expense by the use of a fan or by other mechanical means, such fan or other mechanical means, if he so directs, shall be provided, maintained and used. 1887, 173, § 2. 1894, 508, § 38.

Criminal prosecution for violation of two preceding sections.

SECTION 53. A criminal prosecution shall not be instituted for any violation of the provisions of the two preceding sections unless such employer neglects, for four weeks after the receipt of a notice in writing, to make such changes in his factory or workshop as shall be ordered by an inspector of factories and public buildings. 1887, 173, § 3. 1894, 508, § 39.

Sanitary provisions for public buildings and school houses.

SECTION 54. Every public building and every school house shall be kept clean and free from effluvia arising from any drain, privy or nuisance, shall be provided with a sufficient number of proper water closets, earth closets or privies, and shall be ventilated in such a manner that the air shall not become so impure as to be injurious to health. The provisions of this section shall be enforced by the inspection department of the district police. 1888, 149, §§ 1, 2. 1894, 508, §§ 40, 41.

Inspector may order change in sanitary provisions.

SECTION 55. If it appears to an inspector of factories and public buildings that further or different sanitary or ventilating provisions, which can be provided without unreasonable expense, are required in any public building or school house, he may issue a written order to the proper person or authority, directing such sanitary or ventilating provisions to be provided. A school committee, public officer or person who has charge of, owns or leases any such public building or school house who neglects for four weeks to comply with the order of such inspector shall be punished by a fine of not more than one hundred dollars. Whoever is aggrieved by the order of an inspector issued as above provided and relating to a public building or a school house may, within thirty days after the day of the service thereof, apply in writing to the board of health of the city or town to set

aside or amend the order; and thereupon, the board, after notice to all parties interested, shall give a hearing upon such order and may alter, annul or affirm it. 1888, 149, §§ 3, 4. 1891, 261. 1894, 508, §§ 42, 43, 75. 1900, 239. [1 Op. A. G. 267.]

Rev. Laws, 104.

SECTION 22. No building which is designed to be used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theatre, public hall, place of assemblage or place of public resort, and no building more than two stories in height which is designed to be used above the second story, in whole or in part, as a factory, workshop or mercantile or other establishment and has accommodations for ten or more employees above said story, and no building more than two stories in height designed to be used above the second story, in whole or in part, as a hotel, family hotel, apartment house, boarding house, lodging house or tenement house, and has ten or more rooms above said story, shall be erected until a copy of the plans thereof has been deposited with the inspector of factories and public buildings for the district in which it is to be erected by the person causing its erection, or by the architect thereof. Such plans shall include the method of ventilation provided therefor and a copy of such portion of the specifications therefor as the inspector may require. Such building shall not be so erected without sufficient egresses and other means of escape from fire, properly located and constructed. The certificate of the inspector, indorsed with the approval of the chief of the district police, shall be conclusive evidence of a compliance with the provisions of this chapter unless, after it is granted, a change is made in the plans or specifications of such egresses and means of escape without a new certificate therefor. Such inspector may require that proper fire stops shall be provided in the floors, walls and partitions of such buildings, and may make such further requirements as may be necessary or proper to prevent the spread of fire therein or its communication from any steam boiler or heating apparatus. 1888, 316, § 1. 1893, 199, § 1. 1894, 382, § 3; 481, § 25.

Construction of public buildings, schoolhouses, etc., regulated.

SECTION 23. No wooden flue or air duct for heating or ventilating purposes shall be placed in any building which is subject to the provisions of sections twenty-four and twenty-five and no pipe for conveying hot air or steam in such building shall be placed or remain within one inch of any woodwork, unless protected to the satisfaction of said inspector by suitable guards or casings of incombustible material.

1885, 326. 1888, 316, § 1; 426, § 8. 1893, 199, § 1. 1894, 481, §§ 25, 33.

Wooden flues, air ducts, etc., prohibited.

SECTION 24. Whoever erects or constructs a building, or an

architect or other person who draws plans or specifications or superintends the erection or construction of a building, in violation of the provisions of this chapter, shall be punished by a fine of not less than fifty nor more than one thousand dollars. 1888, 316, § 2. 1893, 199, § 2. 1894, 382, § 3; 481, § 26.

Penalty.

Section 25. A building which is used, in whole or in part, as a public building, public or private institution, school house, church, theatre, public hall, place of assemblage or place of public resort, and a building in which ten or more persons are employed above the second story in a factory, workshop, mercantile and other establishment, and a hotel, family hotel, apartment house, boarding house, lodging house or tenement house in which ten or more persons lodge or reside above the second story, and a factory, workshop, mercantile or other establishment the owner, lessee or occupant of which is notified in writing by an inspector of factories and public buildings that the provisions of this chapter are deemed by him applicable thereto shall be provided with proper egresses or other means of escape from fire, sufficient for the use of all persons accommodated, assembled, employed, lodged or resident therein; but no owner, lessee or occupant of such building shall be deemed to have violated this provision unless he has been notified in writing by such inspector what additional egresses or means of escape from fire are necessary and has neglected or refused to supply the same. The egresses and means of escape shall be kept unobstructed, in good repair and ready for use. Stairways on the outside of the building shall have suitable railed landings at each story above the first, accessible at each story from doors or windows, and such landings, doors and windows shall be kept clear of ice, snow and other obstructions. Portable seats shall not be allowed in the aisles or passageways of such buildings during any service or entertainment held therein. If the inspector so directs in writing, women or children shall not be employed in a factory, workshop, mercantile or other establishment, in a room above the second story from which there is only one egress, and all doors and windows in any building which is subject to the provisions of this section shall open outwardly, and every room above the second story in any such building, in which ten or more persons are employed, shall be provided with more than one egress by stairways or by such other way or device, approved in writing by the inspector, as the owner may elect, on the inside or outside of the building, placed as near as practicable at each end of the room. The certificate of the inspector shall be conclusive evidence of a compliance with such requirements. 1877, 214, §§ 4, 5. 1880, 197. P. S. 104, §§ 15, 16, 18–20. 1882, 266, §§ 1, 2. 1883, 251, § 2. 1888, 207; 426, § 1. 1894, 481, § 24. 1900, 335, § 1. 126 Mass. 84. 161 Mass. 35.

Fire escapes, etc.

SECTION 26. Each story above the second story of a building which is subject to the provisions of the preceding section shall be supplied with the means of extinguishing fire, consisting of pails of water or other portable apparatus or of a hose attached to a suitable water supply and capable of reaching any part of such story; and such appliances shall be kept at all times ready for use and in good condition. 1877, 214, § 4.

Fire extinguishers.

P. S. 104, § 19. 1888, 426, § 9. 1894, 481, § 34.

MANUFACTURE OF CLOTHING.

SECTION 56. A room or apartment in a tenement or dwelling house shall not be used for the purpose of making, altering, repairing or finishing therein coats, vests, trousers or wearing apparel of any description, except by the members of the family dwelling therein; and a family which desires to make, alter, repair or finish coats, vests, trousers or wearing apparel of any description in a room or apartment in a tenement or dwelling house shall first procure a license therefor from an inspector of factories and public buildings, which shall be approved by the chief of the district police. A license may be applied for by, and issued to, any member of a family which desires to do such work. No person, partnership or corporation shall hire, employ or contract with a member of a family which does not hold a license therefor to make, alter, repair or finish garments or articles of wearing apparel as aforesaid, in any room or apartment in a tenement or dwelling house as aforesaid. Every room or apartment in which garments or articles of wearing apparel are made, altered, repaired or finished shall be kept in a cleanly condition and shall be subject to the inspection and examination of the inspectors of the district police for the purpose of ascertaining whether said room or apartment or said garments or articles of wearing apparel or any parts thereof are clean and free from vermin and from infectious or contagious matter. A room or apartment in a tenement or dwelling house which is not used for living or sleeping purposes and which is not connected with a room or apartment used for living or sleeping purposes and which has a separate and distinct entrance from the outside shall not be subject to the provisions of this section, nor shall the provisions of this section prevent the employment of a tailor or seamstress by any person or family for the making of wearing apparel for the use of such person or family.

Regulations for places for making garments.

1891, 357, § 1. 1892, 296, § 1. 1893, 246, § 1. 1894, 508, § 44. 1898, 150, § 1.

SECTION 57. If said inspector finds evidence of infectious or contagious disease or of vermin present in a workshop or in a room or apartment in a tenement or dwelling house in which garments or

articles of wearing apparel are made, altered or repaired, or in goods manufactured or in process of manufacture therein, he shall report the same to the chief of the district police, who shall then notify the local board of health to examine said workshop, room or apartment and the materials used therein; and if the board of health finds that said workshop or tenement or dwelling house is in an unhealthy condition and that the clothing and materials used therein are unfit for use, it shall issue such orders as the public safety may require.

Inspector to report evidence of infectious disease.

1891, 357, § 2. 1893, 246, § 2. 1894, 508, § 45. 1898, 150, § 2.

SECTION 58. Whoever sells or exposes for sale coats, vests, trousers or wearing apparel of any description which have been made in a tenement or dwelling house in which the family dwelling therein has not procured a license, as required by section fifty-six, shall have affixed to each of said garments a tag or label not less than two inches in length and one inch in width, upon which shall be legibly printed or written the words "tenement made" and the name of the state and the city or town in which the garment was made.

Tenement made clothing to be tagged.

1891, 357, § 4. 1892, 296, § 3. 1893, 246, § 4. 1894, 508, § 47. 1898, 150, § 3.

SECTION 59. No person shall sell or expose for sale any of said garments without a tag or label as aforesaid affixed thereto, nor wilfully remove, alter or destroy such tag or label upon any of said garments when exposed for sale, nor sell or expose for sale any of said garments with a false or fraudulent label affixed thereto.

Not to be sold without a tag or label.

1891, 357, § 5. 1893, 246, § 5. 1894, 508, § 48.

SECTION 60. If it is reported to said inspector, to the chief of the district police or to the state board of health that ready-made coats, vests, trousers, overcoats or other garments are being shipped to this commonwealth, having been manufactured under unhealthy conditions, said inspector shall examine said goods and the condition of their manufacture, and if they are found to contain vermin or to have been made in improper places or under unhealthy conditions, he shall so report to the state board of health, which shall thereupon make such orders as the public safety may require.

Clothing shipped to this commonwealth to be inspected, etc.

1891, 357, § 3. 1892, 296, § 2. 1893, 246, § 3. 1894, 508, § 46.

SECTION 61. Whoever violates any of the provisions of the five preceding sections shall be punished by a fine of not less than fifty nor more than five hundred dollars.

Penalties.

1891, 357, § 7. 1893, 246, § 6. 1894, 508, §§ 63, 76.

STABLES.

Rev. Laws, 102.

SECTION 69. No person shall erect, occupy or use for a stable any building in a city whose population exceeds twenty-five thousand unless such use is licensed by the board of health of said city, and, in such case, only to the extent so licensed. The provisions of this section shall not prevent any such occupation and use which was authorized by law on the fourth day of May in the year eighteen hundred and ninety-five, to the extent and by the person so authorized, but the board of health of such a city may make such regulations or orders relative to the drainage, ventilation, number of animals and the storage and handling of manure in any stable existing on said date in their respective cities as in their judgment the public health requires.

Erection, etc., of stables in certain cities regulated.

1890, 230, 395. 1895, 213, §§ 1, 2. 1897, 300, § 3. 159 Mass. 409. 168 Mass. 79.
1891, 220, §§ 1, 3. 1896, 332. 157 Mass. 12. 166 Mass. 83.

On a bill in equity praying that the defendants be enjoined from erecting or causing to be erected a stable, it appeared that they had received from the board of health of the city a license to erect it, granted under the Statutes of 1891, chap. 220, at a public hearing at which the petitioners were represented. The petitioners wished to introduce evidence of what would be the natural and probable effect of the erection and use of the proposed building according to the terms of the license. *Held*, that the statute gave the determination of this question to the board of health, and that the bill should be dismissed with costs.

White *v.* Kenney, 157 Mass. 12.
See also Langmaid *v.* Reed, 159 Mass. 409.

SECTION 70. No person shall erect, occupy or use a building, in a city whose population does not exceed twenty-five thousand, for a stable for more than four horses unless first licensed so to do by the board of health of said city, and in such case, only to the extent so licensed. No person shall, in a city, occupy or use a building for a livery stable or a stable for taking or keeping horses and carriages for hire or to let within two hundred feet of a church or meeting house erected and used for the public worship of God without the consent in writing of the religious society or parish worshipping therein; but the provisions of this section shall not prevent such occupation and use which was authorized by law on the seventeenth day of May in the year eighteen hundred and ninety-one, to the extent authorized at that time.

Stables in vicinity of church regulated.

1891, 220, §§ 1-3.

The provisions of Statute of 1891, chap. 220, prohibiting the erection, occupation or use of any building in any city for a stable for more than four horses, unless first licensed so to do by the board of health of the city, are

an exercise of the police power of the Commonwealth, and are constitutional, although no provision is made for compensation and no right of appeal is given.

Newton *v.* Joyce, 166 Mass. 83.

SECTION 71. Whoever violates the provisions of the two preceding sections or of a regulation or order made pursuant thereto, shall be punished by a fine of five dollars for each day such offence continues. The superior court shall have jurisdiction in equity to restrain such erection, occupation or use contrary to the provisions of said sections. **Penalty.**

1891, 220, § 4. 1895, 213, § 3. 168 Mass. 79.

SECTION 72. The board of health in towns having a population of more than five thousand and the selectmen of other towns may license suitable persons to keep more than four horses in specified buildings or places within their respective towns, and may revoke such licenses at pleasure. Whoever, not being licensed as aforesaid, occupies or uses a building or place for a stable for more than four horses shall forfeit not more than fifty dollars for every month he so occupies or uses such building or place, and in like proportion for a shorter time. The superior court shall have jurisdiction in equity to restrain such occupancy or use without such license. **Stables in towns.**

1851, 319.	G. S. 88, § 32.	1897, 428, § 2.	166 Mass. 83.
1852, 129.	P. S., 102, § 39.	157 Mass. 12.	167 Mass. 380.
1853, 362.	1890, 230, 395.	159 Mass. 409.	168 Mass. 79.

The occupant of a lot of about seven thousand square feet, on which were two buildings, one of a permanent and the other of a temporary character, divided the temporary building into two portions, in one of which were four stalls, and in the other three, and kept upon the premises eleven horses; four of them being kept in the main building, four in one of the temporary buildings, and three in the other. *Held*, that his act was an evasion of the Rev. Laws, chap. 102, sect. 72, which forbids the occupancy or use of "any building or place for a stable for more than four horses," unless a license has been first obtained therefor.

Inhabitants of Brookline *v.* Hatch, 167 Mass. 380.

GARBAGE AND GARBAGE DISPOSAL.

Rev. Laws, 25.

SECTION 14. A town may make contracts: —

For the disposal of its garbage, refuse and offal by contract for a term of years made by the selectmen, board of health or other officers having charge thereof. **Towns may contract for garbage disposal.**

R. S. 15, § 11. G. S. 18, § 9. P. S. 27, § 9. 1889, 377.

Under chap. 490, Acts of 1898, ten taxable inhabitants of the town of Saugus petitioned the court to enjoin the performance of a contract attempted by the board of health of that town, with the following result: —

"A town board of health transcends its powers in attempting to award a contract under Rev. Laws, chap. 25, sect. 14, for the removal of ashes and garbage in violation of a direction contained in the vote of the town making the appropriation that the work should be let out to the lowest responsible bidder."

C. B. Oliver and others *v.* G. W. Gale and others, 182 Mass. 39.

Rev. Laws, 213.

Feeding of garbage to animals.

SECTION 5. Whoever knowingly feeds or has in his possession with intent to feed to a milch cow any garbage, refuse or offal collected by a city or town, or by any person having authority from any city or town, by contract or otherwise, shall be punished by imprisonment for not more than sixty days or by a fine of not more than one hundred dollars; and whoever knowingly feeds or has in his possession with intent to feed to any food animal, except swine, any garbage, refuse or offal collected by a city of more than thirty thousand inhabitants, by contract or otherwise, shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

1889, 326. 1895, 385.

OF THE PROMOTION OF ANATOMICAL SCIENCE.

Rev. Laws, 77.

Disposition of dead bodies.

SECTION 1. Upon the written application of the dean or other officer of any medical school established by law in this commonwealth, the overseers of the poor of a city or town, the trustees for children, the pauper institutions trustees, the insane hospital trustees and the penal institutions commissioner, of the city of Boston, the trustees and superintendent of the state hospital, state farm or other public institution supported in whole or in part at the public expense, except the soldiers' home in Chelsea, shall give such dean or other officer permission to take, within three days after death, the bodies of such persons who die in such town, city, city institution, state hospital, state farm or public institution as are required to be buried at the public expense, to be used within the commonwealth for the advancement of anatomical science; but such permission shall not be given to take the body of any soldier or sailor, known to be such, who served in the war of the rebellion or in the war between the United States and Spain. In giving such permission, regard shall be had to preserving as far as practicable a fair proportion between the number of students in attendance at such institutions and the number of such bodies delivered to them respectively.

1830, 57, § 3.
1834, 187, § 3.
R. S. 22, § 10.
1845, 242, § 1.
1855, 323, § 1.
G. S. 27, § 1.
1879, 291, § 9.
P. S. 81, § 1.
1891, 185, § 1; 406.
1898, 479, § 1.
1900, 333.

SECTION 2. Such dean or other officer, before receiving any such dead body, shall give to the board or officer surrendering the same to him a sufficient bond with condition that such body shall be used only for the promotion of anatomical science within this commonwealth, and in such manner as in no event to outrage the public feeling, that, after having been so used, the remains shall be decently buried, that it shall not be so used for fourteen days after death and that it shall, during said fourteen days, be kept in a condition and place to be viewed by any person, at all reasonable times, for the purpose of identification.

Bond.

1830, 57, § 3. R. S. 22, § 12. P. S. 81, § 2.
1834, 187, § 3. G. S. 27, § 2. 1898, 479, § 2.

SECTION 3. If the deceased person, during his last sickness, of his own accord requests to be buried or requests that his body be delivered up to any friend, or if, within fourteen days after the death of such deceased person, any person claiming to be and satisfying the authorities that he is a friend or is of kindred to the deceased asks to have the body buried or surrendered to himself, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be given up as aforesaid; but shall, in conformity with such request, be either buried or delivered to such friend or kindred.

When bodies are to be buried.

1830, 57, § 3. R. S. 22, § 11. G. S. 27, § 4. 1891, 185, § 2.
1834, 187, § 3. 1845, 242, § 2. P. S. 81, § 4. 1898, 479, § 3.

SECTION 4. Upon conviction of murder in the first degree, the court may order the body of the convict after his execution to be dissected. The sheriff shall in such case deliver it to a professor of anatomy or surgery in a medical school established by law in this commonwealth, if so requested; otherwise, he shall, unless the convict's friends desire it for interment, deliver it to any surgeon attending to receive it who will undertake to dissect it.

Dissection of body of murderer.

1784, 9, § 4. 1804, 123, §1.
R. S. 125, § 2. G. S. 160, § 8. P. S. 202, § 8.

Rev. Laws, 212.

SECTION 64. Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, or mayor and aldermen or selectmen of a city or town, or by the institutions commissioner or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes or conveys away a human body, or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison or jail for not more than three years or by a fine of not more than two thousand dollars.

Violation of sepulture.

1814, 175. R. S. 130, § 19. 1879, 16. 8 Pick. 370. 19 Pick. 304.
1830, 57, §§ 1, 2. G. S. 165, § 37. P. S. 207, § 47. 10 Pick. 37.

The common law, in relation to the offence of disinterring a dead body, is superseded by Statute of 1814, chap. 175, so that an indictment for this offence must conclude *contra formam statuti.*

Commonwealth *v.* Cooley, 10 Pick. 37.

The removal of a dead body is not an offence within the meaning of Statute of 1830, chap. 57 (Rev. Laws, chap. 212, sect. 64), unless it is removed with the intent to use it or dispose of it for the purpose of dissection; wherefore, in an indictment on that statute, such an intent should be averred.

Commonwealth *v.* Slack, 19 Pick. 304.

SECTION 65. Whoever buys or sells, or has in his possession for the purpose of buying, selling or trafficking in, the dead body of a human being shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment for not less than three months nor more than three years. 1855, 323, §§ 2, 3. G. S. 165, § 38. P. S. 207, § 48.

Buying or selling dead body.

THE SUPERVISION OF PLUMBING.

Rev. Laws, 103.

SECTION 1. No person, firm or corporation shall engage in or work at the business of plumbing, either as a master or employing plumber or as a journeyman plumber, unless he or it has received a license or certificate therefor in accordance with the provisions of this chapter. The words "practical plumber", as used in this chapter, shall mean a person who has learned the business of plumbing by working for at least two years as an apprentice or under a verbal agreement for instruction, and who has then worked for at least one year as a first class journeyman plumber. The word "journeyman", as used in this chapter, shall mean a person who himself does any work in plumbing which is by law, ordinance, by-law, rule or regulation subject to inspection. 1894, 455, § 1.

Plumbers, etc., to be licensed.

SECTION 2. Any person who, not having been engaged in or working at the business of plumbing prior to the tenth day of July in the year eighteen hundred and ninety-three, desires to engage in or work at said business, either as a master or employing plumber or as a journeyman plumber, shall apply to the board of health of the city or town in which he intends to engage in or work at said business, or to the inspector of buildings in cities or towns in which such inspector has control of the enforcement of the regulations relative to plumbing, and shall, at a time and place designated by the board of examiners provided for in the following section, to whom such applications shall be referred, be examined as to his qualifications for such business. A license, or the certificate of a plumber registered prior to the first day of September in the year eighteen hundred and ninety-four,

Examination of applicants.

issued to one member of the firm or the manager of the corporation shall satisfy the requirements of this chapter. 1894, 455, § 2.

SECTION 3. In every city, and in every town of five thousand inhabitants or more, and in every town having a system of water supply or sewerage, there shall be a board of examiners of plumbers consisting of the chairman, or such other member of the board of health as said board may designate, and the inspector of buildings in cities and towns having such inspector, who shall be members ex officiis and serve without compensation, and of a third member who shall be a practical plumber and who shall have had continuous practical experience either as a master or as a journeyman during the five years last preceding the date of appointment. Said third member shall annually, before the first day of June, be appointed by the board of health of said city or town for a term of one year and shall be paid by the city or town not more than five dollars for each day of actual service. If, in any city or town there is no inspector of buildings, the board of health shall also appoint the second member of said board of examiners, whose term of office and compensation shall be the same as that of said third member. 1893, 477, § 3. 1894, 455, § 3.

Boards of examiners of plumbers.

SECTION 4. The board of examiners shall, as soon as may be after the appointment of said third member, choose a chairman, and shall then designate the times and places for the examination of all applicants for licenses to engage in or work at the business of plumbing within their respective cities or towns. The board shall examine each applicant as to his practical knowledge of plumbing, house drainage and plumbing ventilation, shall subject him to a satisfactory practical test and if satisfied of his competence shall so certify to the board of health or inspector of buildings who shall thereupon issue to him a license authorizing him to engage in or work at the business of plumbing, either as a master or employing plumber or as a journeyman plumber. Said licenses shall be valid and have force throughout the commonwealth, and shall be renewed annually upon a payment of a fee of fifty cents. Upon the removal of a licensee from the city or town of the board or inspector issuing the original license, it may be renewed by any board having like authority. The fee for a license for a master or employing plumber shall be two dollars, and for a journeyman plumber, fifty cents. 1893, 477, § 4. 1894, 455, § 4.

Licenses, fees, etc.

SECTION 5. The inspector of buildings of each city and town which is subject to the provisions of this chapter, if he has control of the enforcement of the regulations relative to plumbing or, if he has not such control, the board of health, shall, within three months after the acceptance of

Inspectors of plumbing.

the provisions of this chapter, appoint one or more inspectors of plumbing, who shall be practical plumbers and shall have had practical experience, either as masters or as journeymen, continuously, during the five years last preceding the date of appointment, and who shall hold office until removed by said board or inspector for cause shown. All such inspectors shall, before appointment, be subjected to an examination before the civil service commission. The compensation of such inspectors shall be determined by the board or inspector appointing them, subject to the approval of the city council or selectmen, and shall be paid from the treasury of their respective cities or towns. Said inspectors shall inspect all plumbing for which permits are granted within their respective cities or towns, which is in process of construction, alteration or repair, and shall report to said board or inspector all violations of any law, ordinance, by-law, rule or regulation relative to plumbing; and also perform such other appropriate duties as may be required. The approval of plumbing by any inspectors other than those provided for by this chapter shall not be a compliance with the provisions hereof.

1893, 477, § 5. 1894, 455, § 5. 1895, 453.

SECTION 6. No inspector of plumbing shall inspect or approve any plumbing work done by himself, or by any person by whom he is employed, or who is employed by or with him, but in a city or town which is subject to the provisions of this chapter the inspector of buildings or the board of health, as provided in the preceding section, shall appoint an additional inspector of plumbing, in the same manner and subject to the same qualifications as the regular inspector of plumbing, who shall inspect, in the manner prescribed in this chapter, plumbing done by the regular inspector or by any person by whom he is employed, or who is employed by or with him. Said additional inspector may act in case of the absence or inability of the regular inspector, and shall receive for his services the same compensation as the regular inspector for a like duty. The provisions of this section shall not apply to any city or town which has established or shall establish an annual salary for the inspector of plumbing, and in any such city or town, the inspector of plumbing shall not engage in or work at the business of plumbing. 1894, 455, § 6.

Additional inspectors, appointment, etc.

SECTION 7. Each city, except Boston, the city council of which accepts the provisions of this section or has accepted the corresponding provisions of earlier laws and each town of five thousand inhabitants or more, or which has a system of water supply or sewerage, shall by ordinance or by-law prescribe regulations for the materials, construction, alteration and inspection of all pipes, tanks, faucets, valves and other fixtures by

Regulation of plumbing, fixtures, etc.

and through which waste water or sewage is used and carried; and shall provide that such pipes, tanks, faucets, valves or other fixtures shall not be placed in any building in such city or town, except in accordance with plans approved by the inspector of buildings, if he has control as provided in section five, or if he has not such control, by the board of health; and shall further provide that no plumbing shall be done, except to repair leaks, without a permit first being issued therefor, upon such terms and conditions as such cities or towns shall prescribe. The provisions of this section shall not prevent boards of health from making such regulations relative to plumbing and house drainage authorized by law prior to the sixth day of July in the year eighteen hundred and ninety-four as are not inconsistent with any ordinance or by-law made under the authority of this section. 1888, 105, § 1. 1893, 477, § 6.
1894, 455, § 7. 1895, 453, § 1. [1 Op. A. G. 290.]

SECTION 8. Whoever violates any provision of this chapter or any ordinance, by-law or regulation made hereunder shall be punished by a fine of not more than fifty dollars for each offence, and, if he holds a license under the provisions of this chapter, his license may be revoked by the inspector or board which issued it. If the offence was committed in a city or town other than that in which he received his license, the person or board authorized to grant licenses to plumbers in such city or town may forbid him to engage in or work at the business of plumbing for not more than one year in such city or town. If a registered plumber to whom a certificate has been issued violates any provision of this chapter or any ordinance, by-law or regulation made hereunder, either the inspector of buildings or board of health which issued his certificate, or the person or board authorized to grant licenses to plumbers of the city or town in which the offence was committed, may forbid him to engage in or work at the business of plumbing in such city or town for not more than one year. Whoever engages in or works at the business of plumbing in any city or town in which he has been forbidden so to do under the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offence. Any city or town subject to the provisions of this chapter which refuses to comply with any of its provisions shall forfeit fifty dollars to the use of the commonwealth for each month during which such neglect continues. **Penalties.**
1888, 105, § 2. 1893, 477, § 7. 1894, 455, § 8.

SECTION 9. The provisions of this chapter shall apply to all persons learning the business of plumbing when they are sent out to do the work of a journeyman plumber. **Chapter to apply to persons learning business, when.**
1894, 455, § 9.

Tenure of office of inspectors.

SECTION 10. Any person who held an appointment as inspector of plumbing on the sixth day of July in the year eighteen hundred and ninety-four may retain his position, and, without further examination, be deemed to have been appointed under the provisions of this chapter. 1894, 455, § 10.

Expenditure of fees.

SECTION 11. Inspectors of buildings and boards of health may expend such portion of the fees collected by them under the provisions of this chapter as is necessary to properly perform the duties imposed thereby, and they shall annually, before the first day of June, make a full report in detail to their respective cities or towns of all their proceedings during the year under the provisions of this chapter. 1894, 455, § 11.

Acceptance of chapter.

SECTION 12. The provisions of this chapter shall not be operative in any town until accepted by a vote of the inhabitants thereof, nor in such portion of the territory of a city lying outside of the limits of the water supply thereof or unconnected with a common sewer, as the city council votes to exempt from its operation. 1895, 453.

PRINTING AND DISTRIBUTION OF PUBLIC DOCUMENTS, ETC.

Rev. Laws, 9.

Public documents. How and when to be submitted.

SECTION 5. The annual reports which are required by law or custom to be made to the governor and council, to the general court, to the secretary of the commonwealth or to the governor to be by him transmitted to the general court shall, unless otherwise provided, include the year ending on the thirtieth day of September, and be submitted to the secretary of the commonwealth on or before the fifteenth day of October. Whoever wilfully neglects to make and transmit a report as required by this section shall forfeit ten dollars for each day such neglect continues.

Public documents and reports. Their size, illustration, transmission and number of copies.

SECTION 7. There shall be printed annually, before the assembling of the general court or as soon thereafter as possible, the number of copies of documents and reports hereinafter specified, the same to be numbered in a series to be called public documents. Said reports shall be as brief as possible without omitting any facts or information required by law to be contained therein, but said reports may include abstracts or compilations of the statutes relative to the subject-matter of the respective reports. They shall be transmitted to the general court through the office of the secretary of the commonwealth. No more copies

than is herein provided for shall be printed at the expense of the commonwealth or be paid for out of any contingent fund, or out of the earnings of any department or institution which are the property of the commonwealth; and no bill for printing any larger number shall be approved by the auditor or paid out of any funds belonging to the commonwealth. . . . Of the state board of health, five thousand copies. 1902, 438, § 7.

SECTION 8. The secretary of the commonwealth shall furnish one copy of the series of public documents named in the preceding section to each member of the legislative and executive departments, to the clerk of each branch of the general court and to the reporters assigned to seats in either branch. He shall also furnish one copy to each city and town in the commonwealth, to be preserved in a public place therein, and one copy each to such public and other libraries as he may select.

Distribution of documents.

Ten copies shall be placed in the state library for the use of said library and for exchange.

Each member of the general court and the clerk of each branch thereof shall also be entitled to receive seven additional copies of the report of the board of health.

For the relation of boards or commissions to the State Board of Publication, see Acts of 1902, chap. 438.

Rev. Laws, 18.

SECTION 5. A state board and commission which is charged with the expenditure of money shall, in its annual report, give a detailed and itemized account of all money then due from said board or commission and unpaid, and a like statement of all claims against it, giving the name of the claimant and the nature and amount of the claim.

Expenditures to be reported.

SECTION 6. State boards and commissions shall annually, on or before the first Wednesday in January, deposit with the secretary of the commonwealth such parts of their annual reports which are required to be made to the governor and council or to the general court as contain recommendations or suggestions for legislative action; and the secretary shall forthwith transmit them to the governor and council or to the general court.

Recommendations when and how made.

SECTION 13. The offices of all the departments of the state government shall be open to the public for the transaction of business daily, except on Sundays and legal holidays, from nine o'clock in the forenoon until five o'clock in the afternoon, except on Saturdays, when they may be closed at

Hours of business of public offices.

twelve o'clock, noon. The treasurer and receiver general shall not be required to keep his office open for the receipt and payment of money later than two o'clock in the afternoon. 1903, 229.

OF THE RETURN AND REGISTRY OF BIRTHS, MARRIAGES AND DEATHS.

Rev. Laws, 29.

SECTION 1. Each city and town clerk shall receive or obtain and record in separate columns the following facts relative to the births, marriages and deaths in his city or town: —

Facts to be recorded by city and town clerks.

In the record of births, the date of the record, the date of birth, the place of birth, the name of the child, the sex and color of the child, the names and places of birth of the parents, including the maiden name of the mother, the occupation of the father, and the residence of the parents. In the record of the birth of an illegitimate child the name of, and other facts relating to, the father shall not be recorded except at the request in writing of both father and mother. The term "illegitimate" shall not be used in the record of a birth unless the illegitimacy has been legally determined, or has been admitted by the sworn statement of both the father and mother.

In the record of marriages, the date of the record, the date of the marriage, the place of the marriage, the name, residence and official station of the person by whom it was solemnized, the names and places of birth of the parties married, the residence of each, the age and color of each, the number of the marriage (as the first or second) and if previously married, whether widowed or divorced, the occupation of each and the names of their parents, and the maiden names of the mothers. If the woman is a widow or divorced, her maiden name shall also be given.

In the record of deaths, the date of the record, the date of the death, the name of the deceased, the sex, the color, the condition (whether single, widowed, married or divorced), the supposed age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the maiden name of the mother, the disease or cause of death, the place of burial, the name of the cemetery, if any, and if the deceased was a married or divorced woman or a widow, her maiden name and the name of her husband. The word "residence", as used in this section, shall be held to include the name of the street and the number, if any, of the house on the street.

A. C. 43.	1695-6, 2.	1844, 159, § 1.	P. S. 32, § 1.	1897, 444, § 1.
C. L. 130, § 2.	1795, 69, § 1.	1849, 202, § 1.	1887, 202, § 5.	24 Pick. 127.
1692-3, 48.	R. S. 15, § 46.	G. S. 21, § 1.	1890, 402.	

SECTION 2. Births, marriages and deaths shall be recorded separately, separate indexes thereof shall be kept and each entry shall be numbered in its order. All returns of births, marriages and deaths shall be preserved by the city or town clerk and conveniently arranged for examination.

Separate record and indexes.

1887, 202, § 2. 1897, 444, §§ 1, 2, 16.

SECTION 3. Physicians and midwives shall, on or before the fifth day of each month, report to the clerk of each city or town a correct list of all children born therein during the preceding month at whose birth they were present, stating the date and place of each birth, the name, if any, of the child, its sex and color, and the name, place of birth and residence of the parents, the maiden name of the mother, and the occupation of the father. If the child is illegitimate the name of, and other facts relating to, the father shall not be stated, except at the request in writing of both father and mother, filed with the return. The fee of the physician or midwife shall be twenty-five cents for each birth so reported, which shall be paid by the city or town where the report is made, upon presentation to the city or town treasurer of a certificate from the city or town clerk, stating that said births have been properly reported to him. A physician or midwife who neglects to report such list on or before the fifteenth day of the month shall for each offence forfeit not more than twenty-five dollars.

Returns of births monthly.

1865, 96. 1880, 33, §§ 1, 3. P. S. 32, §§ 7, 9. 1883, 158, § 1. 1889, 288. 1897, 444, § 3.

SECTION 4. A member or servant of a family in which a child is born, who has knowledge of the facts required for record relative to such birth, shall furnish the same upon request of the clerk of the city or town in which such child was born or its parents reside, or of any person authorized by him. Such member or servant of a family who refuses to furnish such facts shall for each offence forfeit not more than ten dollars.

Information as to births required.

1897, 444, § 4.

SECTION 5. The clerk of each city and town shall annually in January ascertain the facts required for record by section one relative to all children born therein in the preceding year.

Clerks to obtain facts as to births.

1897, 444, § 5.

SECTION 6. Parents, within forty days after the birth of a child, and every householder, within forty days after a birth in his house, shall cause notice thereof to be given to the clerk of the city or town in which such child is born. Every householder in whose house a death occurs and the oldest next of kin of a deceased person in the city or town in which the death occurs shall, within five days thereafter, cause notice thereof

Notice of births and deaths.

to be given to the board of health, or, if the selectmen constitute such board, to the town clerk. The keeper, superintendent or person in charge of a workhouse, house of correction, prison, reformatory, hospital, almshouse or other institution, public or private, which receives inmates from within or without the limits of the city or town in which it is located shall, when a person is received, obtain a record of all the facts which would be required for record in the event of the death of such person, and shall, on or before the fifth day of each month, give notice to the city or town clerk of every birth and death among the persons under his charge during the preceding month. The facts required for record by section one shall, so far as known or obtainable, be included in every notice given under the provisions of this section. C. L. 130, § 2.

1692-3, 48, 1795, 69, § 2. R. S. 15, § 47. G. S. 21, § 2. P. S. 32, § 2. 1897, 444, § 6.

SECTION 7. The master or other commanding officer of a vessel shall give notice, with the facts required for record, of every birth or death happening among the persons under his charge. The notice of a birth shall be given to the clerk, and a notice of a death shall be given to the board of health or, if the selectmen constitute such board, to the clerk of the city or town at which his vessel first arrives after such birth or death.

Master to report births and deaths on vessel.

1692-3, 48. 1795, 69, § 2. R. S. 15, § 47. G. S. 21, § 2. P. S. 32, § 2. 1897, 444, § 7.

SECTION 8. A parent, keeper, superintendent or other person who is required by section six to give or cause to be given notice of a birth or death, who neglects so to do for ten days after the time limited therefor, and the master or commanding officer of a vessel who neglects so to do for ten days after the arrival of his vessel at the place where notice is to be given, shall forfeit not more than five dollars for each offence.

Penalty for neglect to report.

1795, 69, § 2. R. S. 15, § 47. G. S. 21, § 2. P. S. 32, § 2. 1897, 444, § 8.

SECTION 9. The clerk of a city or town may enter upon the record relating to a person born therein any information obtained in writing by the canvass required by section five, or by his own efforts, which is needed to supply deficiencies in said records, but he shall make no changes in facts already recorded except as provided in section fourteen or except to correct errors in copying from certificates or returns on file in his office. If an error in copying is corrected a statement that the correction is made to correct an error in copying shall be entered upon the record over the signature of the clerk.

Deficiencies in record may be supplied; clerical errors corrected.

1897, 444, § 9.

SECTION 10. A physician shall forthwith, after the death of a person whom he has attended during his last illness, at the request of an undertaker or other authorized person or of any member of the family of the deceased, furnish for registration a certificate, stating to the best of his knowledge and belief the name of the deceased, his supposed age, the disease of which he died, the duration of his last illness, and the date of his death. A physician who has attended at the birth of a child dying immediately thereafter, or a physician or midwife who has attended at the birth of a child born dead, shall forthwith furnish for registration a certificate, stating that to the best of his or her knowledge and belief such child either died immediately after birth or was born dead. Both the birth and death of such child shall be recorded and, if it was born dead, the word "stillborn," shall be entered in both the record of birth and death. A physician or midwife who neglects or refuses to make such certificate or who makes a false statement therein shall forfeit not more than fifty dollars. G. S. 21, § 3.

Physician to give death certificate.

P. S. 32, § 3. 1888, 63; 306, § 1. 1893, 263, § 1. 1897, 444, § 10.

SECTION 11. A physician who furnishes a certificate as required by the preceding section shall, if the deceased was a soldier or a sailor who served in the war of the rebellion, give both the primary and the secondary or immediate cause of death as nearly as he can state the same, and for neglect thereof shall forfeit ten dollars.

Physician to state causes of death of soldier or sailor.

1889, 224. 1897, 444, § 11.

SECTION 12. Every undertaker or other person who has charge of a funeral shall forthwith obtain the physician's certificate required by section ten, enter thereon the facts relative to the deceased which are required by section one to be recorded, and return it to the board of health or its agent, unless it is composed of the selectmen, and in such case, to the clerk of the city or town in which the death occurred. The person making such return shall receive from the city or town a fee of twenty-five cents. The board of health shall transmit such certificate to the city or town clerk. 1844, 159, § 4. 1849, 202, § 3.

Undertakers to make returns, etc.

G. S. 21, § 4. 1872, 275, § 1. 1873, 202. P. S. 32, § 4. 1897, 444, § 12.

SECTION 13. The clerk of each city and town shall forthwith make certified copies of the records of all births and deaths recorded during the previous month, if the parents of the child born or the deceased were residents of any other city or town in this commonwealth or in any other state at the time of said birth or death, and transmit them to the clerk of the city or town of which such parents or deceased person were resident at the time of said birth or

Copies of records of births and deaths of non-resident parents or decedents.

death, stating, if practicable, the name of the street and the number of the house, if any, where such parents or deceased person so resided; and the clerk of a city or town in this commonwealth so receiving such certified copies, or certified copies of births, marriages or deaths, from the clerk of a city or town without the commonwealth, shall record the same.

1889, 208. 1897, 444, § 13.

SECTION 14. If the record relating to a birth, marriage or death does not contain all the required facts, or if it is alleged that the facts are not correctly stated therein, the city or town clerk shall receive an affidavit containing the facts required for record, if made by a person who was required by law to furnish the information for the original record, or, at the discretion of the city or town clerk, by one or more credible persons having knowledge of the case. He shall file such affidavit and record it in a separate book to be kept for that purpose, with the name and residence of the deponent and the date of such record, and shall thereupon draw a line through the incorrect statements without erasing them, shall enter upon the original record the facts required to amend the record and forthwith, if a copy of the record has been sent to the secretary of the commonwealth, shall forward to the secretary a certified copy of the corrected record upon blanks to be provided by him and he shall thereupon amend the record in his office and state in the margin thereof his authority therefor. Reference to the record of the affidavit shall be made by the clerk on the margin of the original record. If the clerk furnishes a copy of such record, he shall certify to the facts contained therein as amended, and shall state in addition that the certificate is issued under the provisions of this section, a copy of which shall be printed on every such certificate. Such affidavit, or a certified copy of the record of any other city or town or of a written statement made at the time by any person since deceased who was required by law to furnish evidence thereof, may, at the discretion of the clerk, be made the basis for the record of a birth, marriage or death not previously recorded, and such copy of record may also be made the basis for completing the record of a birth, marriage or death which does not contain all the required facts.

Correction of errors in record.

1892, 305, § 1. 1894, 402. 1897, 444, § 14.

SECTION 15. Whoever wilfully makes a false return relative to a birth, marriage or death shall forfeit not more than fifty dollars. 1897, 444, § 15.

Penalty for false return.

SECTION 16. Each city and town clerk shall annually give public notice that he will furnish blanks for returns of births to parents, householders, physicians and midwives who apply therefor. 1880, 33, § 2.

Clerks to provide blanks for returns of births.

P. S. 32, § 8. 1897, 444, § 17.

SECTION 17. The secretary of the commonwealth shall, at the expense of the commonwealth, prepare and furnish to the clerks and boards of health of cities and towns, and to the superintendent of the state hospital, record books, books for indexes thereto, forms for returns, on paper of uniform size, and any necessary instructions and explanations. City and town clerks shall distribute the blank forms as the secretary shall direct. A city or town may provide such books and forms if they conform to those prepared by the secretary. 1842, 95, § 2.

Secretary to provide blanks and forms.

1844, 159, §§ 6, 7. G. S. 21, § 9. 1897, 444, § 18.
1849, 202, § 5. P. S. 32, § 14. 1900, 333.

SECTION 18. The clerk of each town and of each city containing less than thirty thousand inhabitants shall annually, on or before the first day of March, the clerks of cities containing more than thirty thousand and less than one hundred thousand inhabitants, on or before the first day of April, and the clerks of cities containing one hundred thousand inhabitants or more, on or before the first day of May, transmit to the secretary of the commonwealth certified copies of the records of births and marriages recorded therein during the preceding calendar year, with certified copies, upon blanks provided by the secretary, of all such records and corrections in records of births and marriages as may not have been previously returned. The clerk of each city and town shall, on or before the tenth day of every month, transmit to the secretary of the commonwealth, upon blanks to be furnished by him, certified copies of the records of deaths recorded in such city or town during the preceding month.

Copies of records to be sent to secretary. Deaths monthly.

1842, 95, § 1. 1849, 202, § 5. 1875, 21. 1894, 206. 1901, 167.
1844, 159, § 1. G. S. 21, § 5. P. S. 32, § 10. 1897, 444, § 19. 1903, 305.

SECTION 19. The secretary of the commonwealth shall require all copies which are transmitted under the provisions of the preceding section to be written in a fair and legible hand, and a city or town clerk who neglects or refuses to make or cause to be made fair and legible copies as required shall forfeit not less than twenty nor more than one hundred dollars, to the use of the commonwealth. 1897, 444, § 20.

Copies to be legibly written.

Clerk's record to be prima facie evidence.

SECTION 20. The record of the city or town clerk relative to a birth, marriage or death shall be prima facie evidence of the facts recorded. A certificate thereof, signed by the city or town clerk or assistant clerk, shall be admissible as evidence of such record. R. S. 75, § 25. G. S. 21, § 6.

P. S. 32, § 11. 10 Allen, 164. 133 Mass. 247. 142 Mass. 468.
1897, 444, § 21. 122 Mass. 58. 141 Mass. 479. 163 Mass. 456.

The record of a marriage by the justice of the peace or minister or the town clerk's or registrar's record of births, marriages and deaths, kept as required by these statutes, or a duly certified copy of either, is held competent evidence.

Kennedy *v.* Doyle, 10 Allen, 161, 164.

The statutes provide that the record of a marriage kept by the person before whom the marriage is solemnized, or by the clerk or registrar of any city or town, shall be received in all courts as presumptive evidence of such marriage.

Commonwealth *v.* Waterman, 122 Mass. 43, 58.

It seems "that the Gen. Stats., chap. 21, sect. 6 (Pub. Stats., chap. 32, sect. 11), being but declaratory of the common law of this Commonwealth, was intended to be retrospective and to apply to all records, whether past or future, of all facts required at the time of the record by law to be recorded relative to any birth, marriage or death."

Shutesbury *v.* Hadley, 133 Mass. 242, 247.

For further decisions on this section see

Commonwealth *v.* Stevenson, 142 Mass. 466.
Commonwealth *v.* Hayden, 163 Mass. 453.

Superintendent of state hospital to make records and returns.

SECTION 21. The superintendent of the state hospital shall obtain, record and make return of the facts relative to the births and deaths in said hospital in the same manner as town clerks. The clerk of the town in which such hospital is located shall, relative to the births and deaths therein, be exempt from the duties otherwise required of him by this chapter.

1855, 366. G. S. 21, § 8. P. S. 32, § 13. 1897, 444, § 22.

Secretary to bind copies. Report.

SECTION 22. The secretary shall cause the copies received by him for each year to be bound, with indexes thereto. He shall tabulate the subject matter and make report thereof annually to the general court.

1842, 95, § 2. 1849, 202, § 5. P. S. 32, § 15.
1844, 159, § 7. G. S. 21, § 10. 1897, 444, § 23.

Registrar in certain cities and towns.

SECTION 23. Any city, except Boston, and any town containing more than ten thousand inhabitants, may choose or provide for the appointment of a person other than the clerk to be registrar. In Boston, the mayor with the approval of the board of aldermen shall appoint a registrar under the provisions of chapter three hundred and fourteen of the acts of the year eighteen hundred and ninety-two. The returns and notices

required to be made by, and given to, clerks shall be made and given to such registrars, who shall be sworn and to whom all the provisions of this chapter relative to clerks shall apply. 1849, 202, § 1.
G. S. 21, § 11. P. S. 32, § 16. 1892, 314. 1897, 444, § 24.

Proceedings on refusal to report.

SECTION 24. The city or town clerk shall give written notice of the requirements of this chapter to any person who neglects to comply therewith, and upon the continuance of such neglect for one month shall notify the agent or attorney duly appointed by the city or town to sue in its corporate capacity, or, if there is no such agent or attorney, the district attorney of his district, who shall cause a prosecution for the penalty or forfeiture therefor to be instituted. 1897, 444, §§ 25, 26.

Omission of name of illegitimate, etc., child.

SECTION 25. In any statement of births and deaths printed by a city or town the name of an illegitimate child or of its parents or of the parents of a stillborn child shall not be printed, but the word "illegitimate" or "stillborn" shall be used in place thereof. A city or town which violates the provisions of this section shall forfeit to the mother of such child not more than one hundred dollars. 1897, 444, § 27.

Disposition of forfeitures.

SECTION 26. All forfeitures recovered under the provisions of this chapter shall, except as provided in sections nineteen and twenty-five, accrue to the benefit of the city or town in which the required return should have been made. 1897, 444, § 28.

Fees of city and town clerks.

SECTION 27. The city or town clerk shall receive the following fees from the city or town upon presenting to the city or town treasurer a certificate of the receipt of the prescribed copies by the secretary of the commonwealth: for each marriage, twenty cents; for each birth, fifty cents; for each death returned to him by an undertaker or the board of health, twenty cents; for each death not so returned but obtained and recorded by him, fifty cents. He shall also receive from the city or town the following fees: for each certificate transmitted under the provisions of section thirteen, twenty-five cents; for receiving and recording an affidavit and forwarding a copy thereof under the provisions of section fourteen, fifty cents; for sending the notice required by section twenty-four, twenty-five cents; for each oath administered in his capacity as clerk, twenty-five cents. A city, or a town containing more than ten thousand inhabitants, may limit the aggregate compensation allowed to its clerk. A city or town clerk shall forfeit not less than twenty dollars nor more than one hundred dollars for each refusal or neglect to perform any duty required of him by this chapter. 1842, 95, § 1. 1844, 159, §§ 5, 8. 1849, 202, §§ 2, 3. G. S. 21, § 7.
1866, 138, § 1. 1875, 145, 341. P. S. 32, § 12. 1897, 444, § 29. 141 Mass. 479.

Oath, administration of.

SECTION 28. An oath which is required by the provisions of this chapter may be administered by the clerk or assistant clerk of a city or town. 1897, 444, § 30.

Attestation of copies under seal.

SECTION 29. City and town clerks or registrars shall attest their copies of the record of births, marriages or deaths with the official seal of the city or town. 1898, 389, § 3.

THE INQUEST LAWS.

The following code supersedes the coroner laws, which were repealed in 1877, abolishing the office of coroner.

OF MEDICAL EXAMINERS.

Rev. Laws, 24.

SECTION 1. The governor, with the advice and consent of the council, shall appoint for a term of seven years, able and discreet men, learned in the science of medicine, to be medical examiners and associate medical examiners in each county. **Appointment of medical examiners.**

1877, 200, §§ 2, 4, 6. 1880, 59, § 2. 1881, 295. P. S. 26, §§ 1, 3, 4. 1898, 318, § 1.

Section 2 defines the limits of the districts served by the medical examiners. Its length forbids its insertion here. The names of the existing medical examiners, and of the cities and towns which comprise their districts, may be found in the Legislative Manual and in the Massachusetts Year Book.

SECTION 3. The associate medical examiner for the county of Suffolk shall, at the request of either of the medical examiners for the county, perform the duties and have the powers of a medical examiner. In any year, each medical examiner may require him to serve one month. The associate medical examiners in the other counties shall in the absence of the medical examiners or in case of their inability to perform their duties, perform, in their respective districts, all the duties of medical examiners. **Duties of associate examiner.**

1880, 59, § 1. 1881, 295. P. S. 26, § 3. 1898, 318, § 2.

SECTION 4. Each medical examiner and associate medical examiner shall, before entering upon the duties of his office, be sworn and give bond for the faithful performance thereof, in the sum of five thousand dollars, to the treasurer of the county, with sureties to be approved by him. If he fails for thirty days after appointment to give such bond, his appointment shall be void. **Official bonds.**

1877, 200, § 5. 1880, 59, § 2. P. S. 26, § 5.

SECTION 5. A surety on such bond, his heirs, executor or administrator may apply to the superior court to be discharged from further liability thereon, whereupon the proceedings shall be the same as are prescribed in section six of chapter twenty-three.

Discharge of surety on bond.

R. S. 14, § 95. G. S. 17, § 76. 1877, 200, § 24. P. S. 26, § 7.

SECTION 6. Upon a breach of the condition of such bond to the injury of any person, the obligor may be removed from office, and actions may be brought upon such bonds in like manner as upon the bond of a sheriff.

Breach of condition of bond.

R. S. 14, § 96. G. S. 17, § 77. 1877, 200, § 24. P. S. 26, § 8.

SECTION 7. In the county of Suffolk, each medical examiner shall receive from the county an annual salary of four thousand dollars, and the associate medical examiner, a salary of six hundred and sixty-six dollars; but if the associate medical examiner serves in any year more than two months, he shall, for such additional service, be paid at the same rate to be deducted from the salary of the medical examiner at whose request he serves. Medical examiners and associate medical examiners in other counties shall receive fees as follows: for a view without an autopsy, five dollars; for a view and autopsy, thirty dollars; and for travel, ten cents a mile to and from the place of view.

Salaries, fees, etc.

1877, 200, § 3. P. S. 26, § 9. 1890, 213.
1881, 295. 1885, 379, § 1. 1892, 286.

SECTION 8. Medical examiners shall, in all cases, certify to the city or town clerk or to the city registrar in the place where the deceased died, his name and residence, if known, otherwise a description of such person as full as may be, with the cause and manner of his death, and shall make examination upon the view of the dead bodies of only such persons as are supposed to have come to their death by violence.

Duties of examiners.

1877, 200, §§ 7, 9. P. S. 26, §§ 10, 12.

SECTION 9. If a medical examiner has notice that there is within his county the body of a person supposed to have come to his death by violence, he shall forthwith go to the place where such body lies, and take charge of the same; and if, on view thereof and personal inquiry into the cause and manner of death, he considers a further examination necessary, he shall, upon being thereto authorized in writing by the district attorney, mayor or selectmen of the district, city or town in which such body lies, make an autopsy in the presence of two or more discreet persons, whose attendance he may compel by subpœna. Before making such autopsy, he shall call the attention of the witnesses to the position and appearance of the body. He shall then

When autopsy shall be made.

and there carefully record every fact and circumstance tending to show the condition of the body and the cause and manner of death, with the names and addresses of said witnesses, which record he shall subscribe. If a medical examiner or associate medical examiner considers it necessary to have a physician present as a witness at an autopsy, he shall be paid five dollars for his services. Other witnesses, except officers named in section forty-two of chapter two hundred and four, shall be allowed two dollars each. 1877, 200, § 8.

P. S. 26, § 11. 1885, 379, § 2. 1890, 440, § 9. 128 Mass. 422. 132 Mass. 261.

See Commonwealth *v.* Dunan, 128 Mass, 422.
Commonwealth *v.* Taylor, 132 Mass, 261.

SECTION 10. He shall forthwith file with the district attorney of his district a report of each autopsy and view and of his personal inquiries, with a certificate that, in his judgment, the manner and cause of death could not be ascertained by view and inquiry and that an autopsy was necessary. The district attorney, if satisfied that an autopsy was necessary, shall so certify to the county commissioners having jurisdiction over the place in which the autopsy was held or, in the county of Suffolk, to the auditor of Boston. If upon such view, personal inquiry or autopsy, the medical examiner is of opinion that the death was caused by violence, he shall at once notify the district attorney and a justice of the police, district or municipal court or trial justice having jurisdiction over the place in which the body was found, and shall file an attested copy of the record of his autopsy in such court or with such justice and with the district attorney.

Report of autopsy to district attorney.

1877, 200, § 9. P. S. 26, § 12. 1885, 379, § 7. 1887, 310, § 2.

SECTION 11. The court or trial justice shall thereupon hold an inquest, from which all persons not required by law to be present may be excluded, and the witnesses may be kept separate, so that they cannot converse with each other until they have been examined. The district attorney, or some person designated by him, may attend the inquest and examine the witnesses. An inquest shall be held in all cases of death by accident upon a railroad, and the court or justice holding such inquest or an inquest in case of death by accident upon a street railway shall give seasonable notice of the time and place thereof to the board of railroad commissioners. The attorney general or the district attorney may direct an inquest to be held in the case of death by any casualty.

When inquest shall be held.

1877, 200, § 10. P. S. 26, § 13. 1894, 535, § 5. 1897, 376, § 2.

SECTION 12. If it appears that the place in which the body was found is without the limits of the judicial district of the court or the

territorial jurisdiction of the trial justice to which or to whom the notice required by the provisions of section ten has been given by the medical examiner, such court or trial justice shall nevertheless proceed with the inquest and have continuous and exclusive jurisdiction thereof if said place is within the commonwealth and within fifty rods of the nearest point in the boundary line of such district or territory, unless a similar but prior notice relative to the same body shall have been issued by a medical examiner for a county adjoining such district or territory at the point aforesaid. 1899, 207.

Jurisdiction extended.

SECTION 13. If an inquest is to be held by a police, district or municipal court, the court may appoint an officer qualified to serve criminal process to investigate the case and to summon the witnesses, and may allow him additional compensation therefor, which shall be paid in like manner as the fees of officers in criminal cases. 1898, 204, § 2.

Appointment of officer to investigate.

SECTION 14. If a magistrate has reason to believe that an inquest to be held by him relates to the death by accident of a passenger or employee upon a railroad or of a traveller upon a public or private way at a railroad crossing, or to a death by accident connected with the operation of a street railway, he shall cause a verbatim report of the evidence to be made and sworn to by the person making it, and the report and the bill for services, after examination and approval in writing by such magistrate, shall be forwarded forthwith to the board of railroad commissioners. Such bill when approved by said board shall be forwarded to the auditor of accounts and be paid by the commonwealth, assessed on the several corporations owning or operating the railroad or street railway on which the accident occurred and shall be collected in the manner provided in section ten of chapter one hundred and eleven. The magistrate may, in his discretion, refuse fees to witnesses in the employ of the company upon whose railroad the accident occurred.

Report of evidence at certain inquests.

1888, 365. 1889, 154. 1890, 440, § 9. 1896, 302.

SECTION 15. The magistrate shall report in writing when, where and by what means the person came to his death, his name, if known, and all material circumstances attending his death; and if it appears that the unlawful act of any other person contributed to the death, he shall further state the name of such person, if known to him; and he shall file such report in the superior court in the county in which the inquest is held.

Report of magistrate.

1877, 260, § 12. P. S. 26, § 15. 134 Mass. 223.

See Commonwealth *v.* Ryan, 134 Mass. 223, 225.

SECTION 16. If the magistrate finds that murder, manslaughter or an assault has been committed, he may bind over, as in criminal prosecutions, such witnesses as he considers necessary, or as the district attorney may designate, to appear and testify at the court having jurisdiction over such crime. 1877, 200, § 13. P. S. 26, § 16.

Witnesses may be bound over.

SECTION 17. If a person charged by the report with the commission of a crime is not in custody, the magistrate shall forthwith issue process for his apprehension, returnable before any court or magistrate having jurisdiction of the case. 1877, 200, § 14. P. S. 26, § 17.

Arrest of person charged with commission of crime.

SECTION 18. The attorney general or the district attorney may, notwithstanding the medical examiner's report that a death was not caused by violence, direct an inquest to be held. 1877, 200, § 15. P. S. 26, § 18.

Inquest may be ordered.

SECTION 19. The medical examiner may, if he considers it necessary, employ a chemist to aid in the examination of the body or of substances supposed to have caused or contributed to the death, who shall be entitled to such compensation as the medical examiner certifies to be just and reasonable. A clerk may be employed to reduce to writing the results of a medical examination or autopsy, and shall be allowed for his services two dollars a day. 1877, 200, § 16. P. S. 26, § 19.

Chemist may aid in examination of body.

SECTION 20. No embalming fluid, or any substitute therefor, shall be injected into the body of any person supposed to have come to his death by violence, until a permit in writing, signed by the medical examiner, has first been obtained. 1892, 152.

Use of embalming fluid restricted.

SECTION 21. After an autopsy or a view or examination without an autopsy, the medical examiner shall deliver the body, upon application, to the husband or wife, the next of kin, or to any friend of the deceased, who shall be entitled to priority in the order named. If the body is unidentified or unclaimed for forty-eight hours after the view thereof, the medical examiner shall deliver it to the overseers of the poor of the city or town in which it is found, who shall decently bury it in accordance with the provisions of section twenty of chapter eighty-one. 1877, 200, § 17. P. S. 26, § 20. 1887, 310, § 1.

Burial of body.

SECTION 22. Medical examiners within their respective districts shall, upon application and payment or tender of a fee of five dollars, view and make personal inquiry concerning a body intended for cremation. 1885, 265, § 4.

View of body intended for cremation.

Compensation for bringing to land body found in water.

SECTION 23. If services are rendered in bringing to land the body of a person found in any of the harbors, rivers, or waters of the commonwealth, the medical examiner may allow reasonable compensation therefor, but this provision shall not entitle any person to compensation for services rendered in searching for a dead body.

1877, 200, § 18. P. S. 26, § 21.

Money, etc., found upon or near body.

SECTION 24. The medical examiner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver it to the person entitled to its custody or possession or, if not claimed by him within sixty days, then to a public administrator.

1877, 200, § 19. P. S. 26, § 22. 13 Allen, 465.

See Smiley *v.* Allen, 13 Allen, 465.

Penalty on examiner for neglecting to give up property.

SECTION 25. A medical examiner who fraudulently neglects or refuses to deliver such property to such person within three days after demand upon him therefor shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years.

1877, 200, § 20. P. S. 26, § 23.

Account of expenses and fees to be rendered, audited, etc.

SECTION 26. Every medical examiner shall return an account of the expenses of each view or autopsy, including his fees, to the county commissioners having jurisdiction over the place in which the examination or view is held, or in the county of Suffolk to the auditor of Boston, and shall annex to his return the written authority under which the autopsy was made. Such commissioners or auditor shall audit such accounts, and certify to the treasurer of the county what items therein are just and reasonable, which shall be paid by him to the person entitled to receive the same. The commissioners shall not certify for payment any fee for an autopsy until the certificate of the district attorney required by the provisions of section ten has been filed with them. 1877, 200, § 21.

P. S. 26, § 24. 1885, 379, § 7. 1887, 310, § 2.

Returns to secretary of commonwealth. Penalty.

SECTION 27. Every medical examiner shall annually, on or before the first day of March, transmit to the secretary of the commonwealth certified copies of the records of all deaths, the cause of which he has investigated during the preceding calendar year and, within sixty days after the expiration of his term of office, he shall make like returns for so much of the year as he was in office. For a refusal or neglect to make such returns he shall forfeit not less than ten nor more than fifty dollars. 1885, 379, §§ 3, 4.

SECTION 28. The fees of trial justices shall be as follows: for filing an attested copy of the record of an autopsy, fifty cents; for each subpœna issued, ten cents; for each day's attendance in holding the inquest, five dollars; for the recognizance of witnesses, twenty cents; and for drawing up and filing a report in the superior court, five dollars. Special justices of police, district or municipal courts, except those entitled to compensation other than that provided by section sixty-nine of chapter one hundred and sixty, shall receive the same fees as trial justices. Said fees, having been audited by the district attorney, shall be paid by the county.

Fees of trial justices for inquests.

1878, 235. P. S. 26, § 25. 1885, 40.

SECTION 29. Each medical examiner, including the medical examiners in the county of Suffolk, shall receive from the commonwealth twenty cents for each of the first twenty deaths recorded and returned by him in any year as above provided, and ten cents for each additional death so recorded and returned, as certified by the secretary of the commonwealth.

Fees for records and returns.

1885, 379, § 4.

SECTION 30. The secretary shall, at the expense of the commonwealth, prepare and furnish to the medical examiners blank record books, and blank forms for returns and shall cause the returns for each year to be bound together in one volume with indexes; and prepare therefrom such tables as will render them of utility, and shall make report thereof annually to the general court in connection with the report required by section twenty-two of chapter twenty-nine.

Record books to be provided and report made to general court.

1885, 379, §§ 5, 6.

Rev. Laws, 121.

SECTION 39. Companies, persons and municipalities engaged in the manufacture and sale of gas or electricity for light or fuel shall, within twenty-four hours, report, in writing, to the board* every accident caused by the gas or electricity manufactured or supplied by them, whereby an employee or other person is injured, killed or rendered insensible, stating the time, place and circumstances of the accident and such other facts relative thereto as the board may require. The chief of police of the city or town, and the medical examiner of the district, in which such accident occurs shall, in writing, report the same to said board. The chief of police shall so report within twenty-four hours, and the medical examiner within seven days, after he has notice thereof. The members of the board shall personally investigate all cases which require investigation. 1888, 350, § 2. 1896, 338.

Report of accidents.

* Board of Gas and Electric Light Commissioners.

LAWS RELATING TO SPECIAL ARTICLES OF FOOD.

BUTTER, CHEESE AND LARD.

Rev. Laws, 56.

SECTION 35. For the purposes of sections thirty-six to forty-seven, inclusive, the word "oleomargarine" shall, in addition to its ordinary meaning, include "butterine", "imitation butter" and any article, substance or compound made in imitation or semblance of butter or as a substitute for butter and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, and for the purposes of sections thirty-seven, thirty-eight and forty-one to forty-seven, inclusive, the terms "butter" and "cheese" shall mean the products which are usually known by these names and are manufactured exclusively from milk or cream, with salt and rennet, and with or without coloring matter.

Definition of "oleomargarine," "butter" and "cheese."

1881, 292, § 5. P. S. 56, § 21.

SECTION 36. Whoever, himself or by his agent, sells, exposes for sale or has in his possession with intent to sell, oleomargarine shall have the word "*oleomargarine*" or "*butterine*" stamped, labelled or marked, so that said word cannot be easily defaced, upon the top, side and bottom of every tub, firkin, box or package containing any of said oleomargarine. Whoever, himself or by his agent, exposes or offers for sale oleomargarine not in the original package shall attach thereto in a conspicuous place a label bearing the words "*imitation butter*", or the word "*oleomargarine*" or "*butterine*". In retail sales of oleomargarine not in the original package the seller shall attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "*imitation butter*", or the word "*oleomargarine*" or "*butterine*". All said stamps, labels and marks shall be in printed letters in a straight line of plain, uncondensed gothic type, not less than one-half inch in length. 1878, 106, § 1. 1881, 292, § 1.

Imitation butter to be marked.

P. S. 56, § 17. 1884, 310, § 1. 1885, 352, § 1. 1886, 317, § 1. 148 Mass. 174. 150 Mass. 328. 157 Mass. 405, 408.

Oleomargarine was exposed for sale in the original package, namely, a tub, the top of the cover of which had been duly marked, as well as the side and bottom, but from which the cover had been removed, disclosing the

superficial surface of the oleomargarine without any mark. *Held*, that the terms of the Statutes of 1886, chap. 317, sect. 1 (Rev. Laws, chap. 56, sect. 36), had been complied with.

Commonwealth *v.* Bean, 148 Mass. 172.

A complaint on the Statutes of 1886, chap. 317, sect. 1 (Rev. Laws, chap. 56, sect. 36), charging the defendant with selling imitation butter at retail without a descriptive wrapper, need not allege that the sale was actually made by the defendant's agent.

Commonwealth *v.* Gray, 150 Mass. 327.

If a complaint charges a person with having in his possession, with intent to sell, oleomargarine in a tub not marked as required by law, he cannot be convicted, if the exceptions show that he had no intent to sell it without having it so marked.

It is not to be inferred that the legislature, merely by making it the duty of certain officers to enforce penal laws of general application, intended that the enforcement should be dependent upon these officers; and a complaint charging a person with having in his possession, with intent to sell, oleomargarine contrary to the requirements of the Statutes of 1886, chap. 317, sect. 1 (Rev. Laws, chap. 56, sect. 36), is not defective because made by an inspector of the state board of health, instead of by an inspector of milk or by the treasurer of the town in which the offence was committed.

Commonwealth *v.* McDonnell, 157 Mass. 407.

The following decision has reference to the sale of oleomargarine by hawkers and pedlers: —

Oleomargarine and butterine are "provisions," within the meaning of the Pub. Stats., chap. 68, sect. 1 (Rev. Laws, chap. 65, sect. 15); and a complaint on sect. 16 (Rev. Laws, chap. 65, sect. 13), for going about carrying and exposing them for sale without a license, cannot be sustained.

Where a bill of exceptions was inartificially drawn, this court construed it as intended to raise the question which the court decided.

Commonwealth *v.* Lutton, 157 Mass. 392.

Imitation cheese to be marked.

SECTION 37. Whoever, himself or by his agent, sells, exposes for sale or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of cheese or as a substitute for cheese, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, shall have the words "*imitation cheese*" stamped, labelled or marked in printed letters of plain, uncondensed gothic type, not less than one inch in length, so that said words cannot be easily defaced, upon the side of every cheese-cloth or band around the same, and upon the top and side of every tub, firkin, box or package containing any of said article, substance or compound. In retail sales of any of said article, substance or compound not in the original packages, the seller shall attach to each package so sold at retail, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "*imitation cheese*", in printed letters of plain uncondensed gothic type, not less than one-half inch in length. 1881, 292, § 2. P. S. 56, § 18. 1885, 352, § 2.

SECTION 38. Whoever sells, exposes for sale or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of butter or cheese or as a substitute for butter or cheese, except as provided in the two preceding sections, and whoever, with intent to deceive, defaces, erases, cancels or removes any mark, stamp, brand, label or wrapper provided for in said sections, or in any manner shall falsely label, stamp or mark any box, tub, article or package marked, stamped or labelled as aforesaid, or whoever, himself or by his agent, sells, exposes for sale, or has in his possession with intent to sell, oleomargarine, contained in any box, tub, article or package, marked or labelled with the word "*dairy*", or the word "*creamery*", or the name of any breed of dairy cattle, shall for the first offence forfeit one hundred dollars, and for each subsequent offence two hundred dollars to the use of the city or town in which the offence was committed.

Penalty for violation of two preceding sections.

1878, 106, § 2. 1880, 199. 1881, 292, § 3. P. S. 56, § 19. 1886, 317, §§ 2, 3. 1894, 280, § 1.

SECTION 39. Every person who conveys oleomargarine in carriages or otherwise, for the purpose of selling the same in any city or town, shall annually, in May, be licensed by an inspector of milk of such city or town to sell the same within the limits thereof, and shall pay therefor to such inspector fifty cents to the use of the city or town. The inspector shall pay over monthly to the treasurer of such city or town all money collected by him. In towns in which there is no inspector of milk, licenses shall be issued by the town clerk. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall be conclusive evidence of ownership. No license shall be sold, assigned or transferred. Each license shall be numbered and shall state the name, residence, place of business, number of carriages or other vehicles used, and the name and residence of every driver or other person engaged in carrying oleomargarine. Each licensee shall before engaging in the sale of oleomargarine cause his name, the number of his license and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale thereof, in gothic letters not less than one inch in length, and he shall report to the inspector any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed, sells oleomargarine, or exposes or offers it for sale from carriages or other vehicles or has it in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall, for a first offence, be punished by a fine of not less than thirty nor more than one

Conveyance of oleomargarine for sale.

hundred dollars, and, for a second offence, by a fine of not less than fifty nor more than three hundred dollars. 1886, 317, § 4.

Registration of sellers of oleomargarine.

SECTION 40. Every person, before selling or offering for sale oleomargarine in a store, booth, stand or market-place in a city or in a town in which an inspector of milk is appointed, shall annually, in May, register in the books of such inspector, or if there is no inspector then in the books of the town clerk, his name and proposed place of sale, and shall pay fifty cents for the registering to the use of such city or town. Whoever neglects so to register shall be punished by a fine of not more than twenty dollars. 1886, 317, § 5.

Manufacture, possession or sale of imitation butter prohibited.

SECTION 41. Whoever, himself or by his agent or servant, renders, manufactures, sells, offers for sale, exposes for sale, takes orders for the future delivery of, has in his possession, keeps in storage, distributes, delivers, transfers or conveys with intent to sell, within the commonwealth, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than one year; but the provisions of this section shall not prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will inform the consumer of its real character, free from any coloration or ingredient which causes it to look like butter.

1891, 58, §§ 1, 2. 156 Mass. 236. 163 Mass. 169.
1894, 280, § 6. 158 Mass. 172. 176 Mass. 132.
1896, 377, § 1. 162 Mass. 520. 155 U. S. 461, 462.

The Statute of 1891, chap. 58 (Rev. Laws, chap. 56, sect. 41), which makes a distinction between oleomargarine which is an imitation of yellow butter and that which is not, and which statute is directed only towards oleomargarine of the former class, is not repealed by the Statute of 1891, chap. 412, sect. 1 (Rev. Laws, chap. 56, sect. 43), which is directed to the distinct fraud of selling or offering to persons calling for butter something besides butter.

The fact that two statutes, similar in their nature and purpose, were both passed at the same session of the legislature, and took effect on the same day, is strong evidence that they were intended to stand together.

The enactment of a statute which forbids the manufacture and sale of oleomargarine which is made in imitation of yellow butter is a valid exercise of the police power which remains in the several states, though such oleomargarine has been imported from another state; and it is not in violation of the constitutional provisions giving to congress the power to regulate commerce among the several states.

Commonwealth *v.* Huntley, 156 Mass. 236.
See also Plumley *v.* Massachusetts, 155 U. S. 461.

If a person has for sale in his shop oleomargarine colored in imitation of yellow butter, which is kept in a closed and covered refrigerator and cannot be seen by customers, although he has a sign in the shop to the effect that oleomargarine is sold there, he does not "expose for sale" such oleomargarine, within the meaning of the Statute of 1891, chap. 58, sect. 1 (Rev. Laws, chap. 56, sect. 41).

Commonwealth *v.* Byrnes, 158 Mass. 172.

The Statute of 1891, chap. 58, sect. 1 (Rev. Laws, chap. 56, sect. 41), entitled "An Act to prevent deception in the manufacture and sale of imitation butter," forbids the exposing for sale of oleomargarine colored to look like butter, and it is immaterial whether the particular purchaser was advised of its real character or not.

Commonwealth *v.* Russell, 162 Mass. 520.

Oleomargarine artificially colored by annatto so as to cause it to look like yellow butter produced from pure unadulterated milk, or cream from the same, is within the prohibition of Statute of 1891, chap. 58, sect. 1 (Rev. Laws, chap. 56, sect. 41), which statute has not been repealed, and is constitutional and valid as applied to oleomargarine so colored.

Commonwealth *v.* Kelly, 163 Mass. 169.

A complaint under Statute of 1891, chap. 58, as amended by Statute of 1896, chap. 377, sect. 1 (Rev. Laws, chap. 56, sect. 41), for having in possession with intent to sell oleomargarine in imitation of yellow butter, produced from unadulterated milk or cream, may be made by an assistant of the board of agriculture.

A complaint under Statute of 1891, chap. 58, as amended by Statute of 1896, chap. 377, sect. 1 (Rev. Laws, chap. 56, sect. 41), which alleges that the oleomargarine was in imitation of yellow butter produced from unadulterated milk or cream, sufficiently shows that the proviso "that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter," does not apply.

A motion to quash a complaint under Statute of 1891, chap. 58, as amended by Statute of 1896, chap. 377, sect. 1 (Rev. Laws, chap. 56, sect. 41), on the ground that it does not allege that the substance "was not renovated butter," is rightly overruled, having renovated butter in possession with intent to sell being made an offence by another statute.

A motion to quash a complaint under Statute of 1891, chap. 58, as amended by Statute of 1896, chap. 377, sect. 1 (Rev. Laws, chap. 56, sect. 41), on the ground that "the complaint is in the alternative when it alleges that the substance was made from adulterated cream or milk," is rightly overruled, the complaint making no such averment, but alleging that the oleomargarine was made partly out of oleaginous substance not produced from unadulterated milk or cream.

Commonwealth *v.* Mullen, 176 Mass. 132.

Complaints for violation instituted by inspectors of milk.

SECTION 42. Inspectors of milk shall, if they have reasonable cause to believe that the provisions of sections thirty-six to forty-seven, inclusive, have been violated, and on the information of any person who lays before them satisfactory evidence by which to sustain such complaints, institute complaints for violations of said sections. They may enter all places in which butter, cheese or imitations

thereof are stored or kept for sale, and shall take samples of suspected butter, cheese or imitations thereof and cause them to be analyzed or otherwise satisfactorily tested, and shall record and preserve the result of such analysis or test as evidence. Before commencing the analysis of any sample in proceedings under sections thirty-six, thirty-seven and thirty-eight, the analyst shall reserve and seal a portion of the sample, and, upon a complaint against any person, such reserved portion of the sample alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the expenses of such prosecutions. Whoever hinders, obstructs or in any way interferes with an inspector or his agent in the performance of his duty under the provisions of this section shall be punished by a fine of fifty dollars for the first offence and of one hundred dollars for each subsequent offence. 1881, 292, § 4. P. S. 56, § 20. 1884, 310, §§ 2, 4.
1891, 58, § 3. 132 Mass. 12. 176 Mass. 132. 177 Mass. 67.

SECTION 43. Whoever, himself or by his agent, sells or offers for sale to any person who asks, sends or inquires for butter, any oleomargarine, shall be punished by a fine of one hundred dollars for each offence. **Fraud in sale of butter.**

1891, 412, § 1. 1894, 280, § 2. 156 Mass. 236. 155 U. S. 461.

SECTION 44. Whoever exposes for sale oleomargarine which is not marked and distinguished by all the marks, words and stamps required by law, and does not have upon the exposed contents of every open tub, package or parcel thereof a conspicuous placard with the word "*oleomargarine*" printed thereon in plain, uncondensed gothic letters, not less than one inch long, shall be punished by a fine of one hundred dollars for each offence. **Marks required on tubs, etc.**

1891, 412, § 2. 1894, 280, § 3. 148 Mass. 172. 150 Mass. 327.

SECTION 45. Whoever sells oleomargarine from any dwelling, store, office or public mart which does not have conspicuously posted thereon the placard or sign, in letters not less than four inches in length, "*oleomargarine sold here*", or "*butterine sold here*", approved by the dairy bureau, shall be punished by a fine of one hundred dollars for the first offence and one hundred dollars for each day's neglect after conviction for the first offence. 1891, 412, § 3. 156 Mass. 236, 239. **Placard required in store.**

SECTION 46. Whoever, himself or by his agent, peddles, sells, solicits orders for the future delivery of or delivers from any cart, wagon or other vehicle, oleomargarine, not having on both sides of said cart, wagon or other vehicle the placard in uncondensed gothic letters, not less than three **Placard required on cart.**

inches in length, "*licensed to sell oleomargarine*" shall be punished by a fine of one hundred dollars or by imprisonment for thirty days for each offence. 1891, 412, § 4. 1894, 280, § 4. 158 Mass. 218. 162 Mass. 506.

A complaint under the Statute of 1891, chap. 412, sect. 4 (Rev. Laws, chap. 56, sect. 46), for selling oleomargarine from a wagon, at a time and place named, the defendant "not having then and there on both sides of said vehicle the placard, in uncondensed gothic letters not less than three inches in length, 'Licensed to sell Oleomargarine,'" is supported by proof that the defendant's wagon was a covered one, with the front and rear ends open; that on the inside of the cover on each side was a placard, in form and size such as the statute requires; that these placards could be seen from the front and rear of the wagon, but could not be seen from the sides thereof; and that there were no placards on the outer sides of the wagon.

At the trial of a complaint under the Statute of 1891, chap. 412, sect. 4 (Rev. Laws, chap. 56, sect. 46), for selling oleomargarine from a wagon, at a time and place named, the defendant "not having then and there on both sides of said vehicle the placard, in uncondensed gothic letters not less than three inches in length, 'Licensed to sell Oleomargarine,'" the defendant has no ground of exception to the refusal of the judge to rule that this section of the statute "is in conflict with the act of congress of August 2, 1886, and the rules and regulations of the commissioner of internal revenue thereunder, and is therefore unconstitutional and void."

Commonwealth *v.* Crane, 158 Mass. 218.

The Statute of 1891, chap. 412, sect. 4 (Rev. Laws, chap. 56, sect. 46), was not intended to draw fine distinctions between different kinds of oleomargarine, all of which would resemble butter; but it requires that every one who delivers oleomargarine, of whatever sort, from a vehicle upon the public streets, shall carry along with him upon his vehicle a public notice that he is licensed to sell oleomargarine.

Commonwealth *v.* Crane, 162 Mass. 506.

Serving oleomargarine at hotels.

SECTION 47. Whoever furnishes oleomargarine or causes it to be furnished in any hotel, restaurant or boarding house or at any lunch counter, to a guest or patron thereof, instead of butter, without notifying said guest or patron that the substance so furnished is not butter shall be punished by a fine of not less than ten nor more than fifty dollars for each offence. 1891, 412, § 5. 1896, 377, § 2. 159 Mass. 113.

The proprietor of a restaurant furnished oleomargarine to a guest in the place of butter. There were signs in conspicuous places in the restaurant bearing the words, "Butterine used only here," and on the tables were bills of fare on which were printed the words, "Only fine butterine used here." The guest saw neither of the signs, and did not examine the bill of fare, and no oral notice was given to him that the substance furnished to him was not butter. *Held*, that the proprietor of the restaurant could be convicted of an offence under the Statute of 1891, chap. 412, sect. 5 (Rev. Laws, chap. 56, sect. 47).

Commonwealth *v.* Stewart, 159 Mass. 113.

SECTION 48. Whoever, himself or by his agent, or as the servant or agent of another person, sells, exposes for sale or has in his cus-

tody or possession with intent to sell, any article or compound which is produced by taking original packing stock or other butter, or both, melting the same, so that the butter fat can be drawn off, mixing the said butter fat with skimmed milk, or milk, or cream, or other milk product, and re-churning the said mixture, or by any similar process, and is commonly known as process butter, shall have the words "*renovated butter*" conspicuously stamped, labelled or marked, in a straight line in printed letters, not less than one-half inch in length, of plain, uncondensed gothic type, so that said words cannot be easily defaced, upon the top, side and bottom of every tub, firkin, box or package containing said article or compound. The seller at retail of said article or compound, which is not in the original package, shall himself or by his agent, attach to each package so sold and deliver therewith to the purchaser a label or wrapper bearing in a conspicuous place upon the outside of the package the words "*renovated butter*" in printed letters not less than one-half inch in length in a straight line of plain uncondensed gothic type. Whoever violates any provision of this section shall for a first offence be punished by a fine of not less than twenty-five nor more than one hundred dollars, for a second offence by a fine of not less than one hundred nor more than three hundred dollars, and for a subsequent offence by a fine of five hundred dollars or by imprisonment for not less than sixty nor more than ninety days. 1899, 340. 1903, 361.

Sale of renovated butter.

Section 49. No person shall sell, deliver, prepare, put up, expose or offer for sale any lard, or any article intended for use as lard, which contains any ingredient except the pure fat of swine, in any tierce, bucket, pail or other vessel or wrapper, or under any label, bearing the words "*pure*", "*refined*", "*family*", or either of them, alone or in combination with other words; but every vessel, wrapper or label in or under which such article is sold, delivered, prepared, put up or exposed for sale by him shall bear on the top or outer side thereof, in letters not less than one-half inch in length and plainly exposed to view, the words "*compound lard*". Whoever violates the provisions of this section shall be punished by a fine of not more than fifty dollars for the first offence or of not more than one hundred dollars for a subsequent offence. 1887, 449.

Wrappers of adulterated lard to be marked.

Section 50. All fines recovered under the provisions of sections forty-three, forty-four, forty-five, forty-six and forty-seven shall be payable to the commonwealth. 1891, 412, § 12.

Disposition of fines.

MILK.

SECTION 51. The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more inspectors of milk for their respective cities and towns. Each inspector shall be sworn before entering upon the performance of his official duties and shall publish a notice of his appointment for two weeks in a newspaper published in his city or town, if any; otherwise he shall post such notice in two or more public places in such city or town. He shall receive such compensation as the mayor and aldermen or selectmen may determine.

Appointment of inspectors of milk.

1859, 206, §§ 1, 3. G. S. 49, § 148. 1864, 122, §§ 1, 2.
P. S. 57, §§ 1, 2. 1884, 310, § 3. 1885, 352, § 4. 1886, 318, § 1.

SECTION 52. Such inspectors shall keep an office and shall record, in books kept for the purpose, the names and places of business of all persons engaged in the sale of milk within their city or town. They may, with the approval of the mayor or selectmen, employ collectors of samples of milk, who shall be sworn before entering upon their duties. The inspectors or collectors may enter all places in which milk is stored or kept for sale and all carriages used for the conveyance of milk, and may take therefrom samples for analysis. They shall, upon request made at the time such sample is taken, seal and deliver to the owner or person from whose possession the milk is taken a portion of each sample, and a receipt therefor shall be given to the inspector or collector. Inspectors shall cause such samples to be analyzed or otherwise satisfactorily tested, and shall record and preserve as evidence the results thereof; but no evidence of the result of such analysis or test shall be received if the inspector or collector on request, refuses or neglects to seal and deliver a portion of the sample taken as aforesaid to the owner or person from whose possession it is taken.

Their duties and powers.

1859, 206, §§ 1, 2.
G. S. 49, § 149.
1860, 165, § 2.
1864, 122, § 2.
P. S. 57, § 2.
1884, 310, §§ 3, 4.
1885, 352, § 4.
1886, 318, §§ 1, 3.
11 Allen, 264.
132 Mass. 12.
141 Mass. 135.
143 Mass. 172, 418.
144 Mass. 132.
157 Mass. 460.

Pub. Stats., chap. 57, sect. 2 (Rev. Laws, chap. 56, sect. 52), so far as it authorizes inspectors of milk to enter all carriages used in the conveyance of milk, and, whenever they have reason to believe any milk found therein is adulterated, to take specimens thereof for the purpose of analyzing or otherwise satisfactorily testing the same, is constitutional.

Commonwealth *v.* Carter, 132 Mass. 12.

Placing wax upon the top of the cork in a bottle containing a portion reserved from a sample of milk taken for analysis, and not extending the wax over the mouth of the bottle and thus rendering the bottle air-tight, is not a sufficient compliance with the requirements of the Statutes of 1884, chap.

310, sect. 4 (Rev. Laws, chap. 56, sect. 52), that such reserved portion shall be "sealed."

Commonwealth *v.* Lockhardt, 144 Mass. 132.

The fact that a collector of samples of milk, who was not acting under the authority of the Statute of 1886, chap. 318 (Rev. Laws, chap. 56, sect. 52), made a purchase of milk in a restaurant and retained a portion thereof for analysis without disclosing that he was such a collector, and without giving to the person from whom it was purchased an opportunity to ask for a sealed sample, will not render evidence incompetent to show that the milk so purchased was below the legal standard.

Commonwealth *v.* Coleman, 157 Mass. 460.

SECTION 53. Whoever, in cities and in towns in which an inspector of milk is appointed, conveys milk in carriages or otherwise for the purpose of selling it, in such city or town shall annually, before the first day of June, be licensed by the inspector of milk of such city or town to sell milk within the limits thereof, and shall pay to such inspector fifty cents to the use of the city or town. The inspector shall pay over monthly to the city or town treasurer all money collected by him. Licenses shall be issued only in the names of the owners of carriages or other vehicles. They shall, for the purposes of this chapter, be conclusive evidence of ownership and shall not be sold, assigned or transferred. Each license shall contain the number thereof, the name, residence, place of business, number of carriages or other vehicles used by the licensee and the name of every driver or other person employed by him in carrying or selling milk. Each licensee shall, before engaging in the sale of milk, cause his name, the number of his license and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector any change of driver or other person who may be employed by him occurring during the term of his license. Whoever, without being first so licensed, sells milk or exposes it for sale from carriages or other vehicles, or has it in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall for a first offence be punished by a fine of not less than thirty nor more than one hundred dollars, for a second offence by a fine of not less than fifty nor more than three hundred dollars and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than thirty nor more than sixty days. 1859, 206, § 2. G. S. 49, § 151. 1864, 122, § 4. 1880, 209, § 1. P. S. 57, § 3.

Vendors of milk in carriages to be licensed.

SECTION 54. Every person, before selling milk or offering it for sale in a store, booth, stand or market-place in a city or in a town in which an inspector of milk is appointed, shall register in the books of such inspector his name and proposed place of sale, and shall pay to him fifty cents

Vendors of milk in stores to be registered.

to the use of such city or town. Whoever neglects so to register shall be punished by a fine of not more than twenty dollars.

1864, 122, § 4. 1880, 209, § 2. P. S. 57, § 4. 1 Allen, 593. 2 Allen, 157.

Sale of adulterated and skimmed milk.

SECTION 55. Whoever, himself or by his servant or agent, or as the servant or agent of another person, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver or exposes or offers for sale or exchange, adulterated milk or milk to which water or any foreign substance has been added, or milk produced from cows which have been fed on the refuse of distilleries, or from sick or diseased cows, or, as pure milk, milk from which the cream or a part thereof has been removed, and whoever sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent of milk solids exclusive of fat, shall for a first offence be punished by a fine of not less than fifty nor more than two hundred dollars, for a second offence by a fine of not less than one hundred nor more than three hundred dollars and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than sixty nor more than ninety days. 1856, 222. 1859, 206, §§ 4, 5.

G. S. 49, § 151.
1860, 165, § 1.
1863, 140, § 2.
1864, 122, § 4.
1868, 263, § 1.
1869, 150, § 1.
1870, 311.
1872, 319, §§ 1–3.
1880, 209, §§ 3, 4.
P. S. 57, §§ 5, 6.
1885, 352, § 8.
1886, 318, § 2.
1900, 300, § 1.
9 Allen, 489.
10 Allen, 199.
11 Allen, 264.
103 Mass. 444.
107 Mass. 194.
130 Mass. 42.
132 Mass. 11.
139 Mass. 193.
140 Mass. 483.
141 Mass. 129.
143 Mass. 169, 172, 418.
144 Mass. 357.
146 Mass. 38, 128, 512.
149 Mass. 9.
153 Mass. 159.
155 Mass. 442.
159 Mass. 8.
160 Mass. 533.
165 Mass. 38.

An indictment which alleges that the defendant "did unlawfully keep, offer for sale and sell" adulterated milk, charges but one offence.

In support of such indictment, one, who in a great many instances has used a lactometer for the purpose of testing the quality and the purity of milk, may testify to the result of an experiment made by him with the same lactometer upon the milk in question, although no evidence is offered as to the character of the instrument.

Commonwealth *v.* Nichols, 10 Allen, 199.

At the trial of an indictment on Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), for selling adulterated milk, there was evidence that the defendant [who was a son of the owner of a milk route], with a companion who was in the same employment with himself, knowingly adulterated milk on its way for distribution to his father's customers, and then, having charge, with his companion, of its distribution from the wagon on which it was conveyed upon the route, caused a can of it to be delivered to one of the customers by the hand of his companion. *Held*, that he had no ground of exception to instructions to the jury, that, in the absence of proof of any previous contract to supply milk to the customer, the delivery might be deemed an act of sale; nor to an instruction framed on a supposition that the jury might find that he was in the employment of his father, although there was no averment in the indictment to that effect.

Commonwealth *v.* Haynes, 107 Mass. 194.

A person may be convicted of selling adulterated milk upon a complaint under Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), without allegation or proof that he knew it to be adulterated.

Commonwealth *v.* Evans, 132 Mass. 11.

A complaint under Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), alleging that the defendant, at a time and place named, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found on analysis to contain less than thirteen per cent. of milk solids. At the trial of a complaint under Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), alleging that the defendant had in his possession adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent to sell the same, it is immaterial in what manner the quantity of milk solids has been reduced below thirteen per cent., if the intent is to sell the milk as pure milk, and not as skimmed milk.

Commonwealth *v.* Bowers, 140 Mass. 483.

A complaint, under the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), alleging, in one count, that the defendant, at a time and place named, sold a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, and in another count alleging that the defendant, at the same time and place, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found, on analysis, to contain less than thirteen per cent. of milk solids.

The Pub. Stats., chap. 57, sect. 10 (Rev. Laws, chap. 56, sect. 64), do not prohibit any person not an inspector of milk from making a complaint for a violation of the provisions of the chapter.

A complaint, under the Pub. Stats., chap. 57, sect. 5 (Rev Laws, chap. 56, sect. 55), alleging that the defendant sold one pint of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, is not supported by the proof that he sold the milk as skimmed milk out of a tank marked as required by sect. 7 (Rev. Laws, chap. 56, sect. 58), although the milk was watered.

A complaint under the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), alleging a sale of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, is supported by proof of a sale of milk, which, by the removal of a part of the cream, has been reduced to solids below thirteen per cent., unless the milk was sold as skimmed milk, and out of a vessel, can, or package marked as required by sect. 7 (Rev. Laws, chap. 56, sect. 58); and it is not necessary that a complaint charging such offence should be drawn under sect. 6 (Rev. Laws, chap. 56, sect. 55).

At the trial of a complaint, under the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), alleging, in the first count, a sale by the defendant, at a time and place named, of adulterated milk, and, in the second count, the having in his possession, at the same time and place, such milk, with intent unlawfully to sell the same, the defendant asked the judge to rule, that, "If the jury find, on the evidence, that there was a consummated sale, they cannot convict under the second count." The judge declined so to rule, and, after instructing the jury as to what would authorize a conviction

on the first count, instructed them that, "if they should further find that the defendant kept the same milk with intent to sell it, they would be authorized to return a verdict of guilty on the second count." *Held*, that the defendant had no ground for exception.

Commonwealth *v.* Tobias, 141 Mass. 129.

At the trial of a complaint, under the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), alleging that the defendant had in his possession adulterated milk, with intent unlawfully to sell the same, the evidence showed that a wagon with the defendant's name and a number on it was standing upon a public street in a city at an early hour of the morning; that the defendant's servant was on the wagon, and there were several eight-quart cans in the wagon; that a collector of samples in the employ of the inspector of milk for the city took a sample of milk from one of the cans, which was not marked "skimmed milk;" and that an analysis of the milk taken showed that it was below the legal standard. *Held*, that there was evidence of an intent on the part of the defendant to sell the milk, which was properly submitted to the jury.

Commonwealth *v.* Smith, 143 Mass. 169.

At the trial of an indictment on the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), charging the defendant with having adulterated milk in his possession, with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk may testify to the result of his analysis of the milk taken from the defendant from memory, using a memorandum made by him at the time of analysis to refresh his memory, without further proof that the requirements of the Pub. Stats., chap. 57, sect. 2, as amended by the Statutes of 1884, chap, 310, sect. 3 (Rev. Laws, chap. 56, sect. 52), have been complied with.

At the trial of an indictment on the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), charging the defendant with having adulterated milk in his possession with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk, who analyzed the milk taken from the defendant, testified that he reserved a portion of the milk so taken by putting it into a bottle, which he corked and sealed. A chemist to whom the analyst delivered a portion of the milk so reserved, testified, for the defendant, that the bottle was not sealed. The defendant asked the judge to rule that, if the bottle was corked only, it was not a compliance with the Statutes of 1884, chap. 310, sect. 4 (Rev. Laws, chap. 56, sect. 52), as to the sealing of such reserved portion. The judge declined so to rule, and instructed the jury that they might consider the evidence as bearing upon the credibility of the government witness. *Held*, that the defendant had no ground for exception.

If at a trial of an indictment on the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), charging the defendant with having adulterated milk in his possession, with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk of a city testifies that he added, for the preserving it, a few drops of carbolic acid to the sample reserved from milk delivered to him for analysis, it is a question of fact for the jury whether the reservation of the sample was in accordance with the requirement of the Statutes of 1884, chap. 310, sect. 4 (Rev. Laws, chap. 56, sect. 52).

Commonwealth *v.* Spear, 143 Mass. 172.

A complaint on the Statutes of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 56), alleging that, on the first day of July, 1886, the defendant had in his possession "one pint of milk not of standard quality, that is to say,

milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same within this Commonwealth," is sufficient, without negativing the exception of the months of May and June.*

The Statutes of 1885, chap. 352, sect. 6, provide that sect. 9 of the Pub. Stats., chap. 57 (which relates to the sale of adulterated milk), "Is hereby amended so as to read as follows." In each section, after the words quoted, there follows a sentence which covers the whole subject of the original section. *Held*, that the Statutes of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 56), was a valid enactment.

The Statutes of 1884, chap. 310, sect. 4, providing for the reservation and sealing, before commencing the analysis, of a portion of the sample of milk taken for analysis, is impliedly repealed by the Statutes of 1886, chap. 318, sects. 1, 3 (Rev. Laws, chap. 56, sect. 52).

Commonwealth *v.* Kenneson, 143 Mass. 418.

The Statute of 1885, chap. 352, sect. 8, provides that no person shall sell, or have in his possession with intent to sell, skimmed milk below a certain standard, and enacts that whoever violates the provisions of this section shall be punished by the penalties provided in the Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55). *Held*, on a complaint, made under the Statutes of 1885, chap. 352, sect. 8, for an offence committed after the Statutes of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), took effect, that even if the last-named statute repealed by implication the Pub. Stats., chap. 57, sect. 5, the complaint could be maintained.

Commonwealth *v.* Kendall, 144 Mass. 357.

On a complaint for the sale of milk not of good standard quality, evidence that the milk was delivered under a special contract is immaterial.

If a buyer of milk takes a portion to a milk inspector, the latter may testify on the trial of such a complaint as to the results of his analysis.

Commonwealth *v.* Holt, 146 Mass. 38.

An averment in a complaint under the milk acts, that the defendants were "partners," is mere surplusage, and need not be proved.

On such a complaint, evidence that the defendant was on a wagon with a license number on it, and containing milk cans, from one of which was taken adulterated milk, is competent on the issue that he was in possession of the milk to sell it.

Commonwealth *v.* Rowell, 146 Mass. 128.

A motion to quash an indictment because it "sets forth no crime or offence known to the law," made after the impanelling of the jury, is filed too late; nor does it assign "specifically the objection relied on," within the Pub. Stats., chap. 214, sect. 25 (Rev. Laws, chap. 219, sect. 21).

An indictment on the Statutes of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), alleging that the defendant had in his "possession milk to which a certain foreign substance had been added, to wit, annatto coloring matter," with intent unlawfully to sell the same, is sufficient without naming the quantity.

Evidence offered at the trial of such an indictment as to two samples of milk, taken from the defendant's possession at substantially the same time, is competent, and the government cannot be required at the time of the offer, if ever, to elect which sample it will rely on.

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* Note the amended statute (Rev. Laws, chap. 56, sect. 56); adds the months of April, July, August and September to the list of months in which the lower standard prevails.

The addition of annatto coloring matter, whether injurious to health or not, is punishable under the statute.

Evidence that the milk was of low grade is competent, although it may tend to prove another offence.

Commonwealth *v.* Schaffner, 146 Mass. 512.

Complaint under the Pub. Stats., chap. 57, sect. 5, as amended by the Statutes of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), to the municipal court of the Charlestown district in the city of Boston, alleging that the defendant, on March 27, 1890, "did have in his possession milk to which a foreign substance had been added, to wit, annatto coloring matter," with intent unlawfully to sell the same.

Under the Pub. Stats., chap. 57, sect. 5, as amended by the Statutes of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), relating to the adulteration of "milk," it is an offence to have in one's possession skimmed milk containing a foreign substance with intent unlawfully to sell the same.

Commonwealth *v.* Wetherbee, 153 Mass. 159.

A hotel-keeper, who sells milk to his guests to be drunk by them on his premises, may be convicted of an offence under the Statute of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), if the milk so sold is not of the required standard of quality.

If a sale of milk, which is not of the required standard of quality, is made by a hotel-keeper's servant, in the ordinary course of his employment, to a guest to be drunk on the premises, the hotel-keeper will be responsible therefor, under the Statute of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), though he was not present and did not consent to or know of the particular sale.

Commonwealth *v.* Vieth, 155 Mass. 442.

A complaint under Pub. Stats., chap. 57, sect. 5 (Rev. Laws, chap. 56, sect. 55), charging the defendant with having in his possession, with intent to sell, milk to which a foreign substance had been added, is sustained by proof of possession, with that intent, of cream to which boracic acid had been added.

A complaint under Pub. Stats., chap. 57, sect. 5 (Rev, Laws, chap. 56, sect. 55), charging the defendant with having in his possession, with intent to sell, milk to which a foreign substance had been added, was heard on an "agreed statement of facts," which was not a case stated in writing and filed, but an admission of facts from which the jury were at liberty to draw inferences. *Held*, that the jury might infer the offence charged from a sale by the defendant from his restaurant.

Commonwealth *v.* Gordon, 159 Mass. 8.

A person may be convicted of violating Statute of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), whose servant in the course of his employment makes an inadvertent sale of milk "not of good standard quality."

If milk is ordered by and delivered to a customer in a hotel as a part of his breakfast, for which he pays a round sum, it is a sale of the milk which, if the milk is "not of good standard quality," will support a complaint on Statute of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55).

Commonwealth *v.* Warren, 160 Mass. 533.

A master may be convicted, under Statute of 1886, chap. 318, sect. 2 (Rev. Laws, chap. 56, sect. 55), of having in his custody and possession milk not of the required standard of quality, if in the custody and possession of a servant, in the ordinary course of his employment, and the general law governing the responsibility of a master for the acts of his servant in such

cases was not intended to be affected by Statute of 1894, chap. 425 (Rev. Laws, chap. 56, sect. 62).

Commonwealth *v.* Proctor, 165 Mass. 38.

SECTION 56. In prosecutions under the provisions of sections fifty-one to sixty-four, inclusive, milk which, upon analysis, is shown to contain in April, May, June, July, August and September less than twelve per cent of milk solids, or less than nine per cent of milk solids exclusive of fat, or less than three per cent of fat, and in the other months to contain less than thirteen per cent of milk solids, or less than nine and three-tenths per cent of milk solids exclusive of fat, or less than three and seven-tenths per cent of fat, shall not be considered milk of good standard quality.

Standard milk defined.

1880, 209, § 7. 1885, 352, § 6. 1896, 398, § 2. 132 Mass. 11. 143 Mass. 418.
P. S. 57, § 9. 1886, 318, § 2. 1899, 223. 139 Mass. 193.

Pub. Stats., chap. 57, sect. 9 (Rev. Laws, chap. 56, sect. 56), providing that "in all prosecutions under this act," for selling adulterated milk, "if the milk shall be shown upon analysis to contain more than eighty-seven per centum of watery fluid or to contain less than thirteen per centum of milk solids, it shall be deemed for the purposes of this act to be adulterated," is constitutional.

Commonwealth *v.* Evans, 132 Mass. 11.

A complaint under the Pub. Stats., chap. 57, sects. 5, 9 (Rev. Laws, chap. 56, sects. 55, 56), alleging that the defendant, at a time and place named, had in his custody and possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk then and there containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient.

Commonwealth *v.* Keenan, 139 Mass. 193.

SECTION 57. Whoever, himself or by his servant or agent or as the servant or agent of another person, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver, milk which is not of good standard quality shall for a first offence be punished by a fine of not more than fifty dollars, for a second offence by a fine of not less than one hundred nor more than two hundred dollars, and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than sixty nor more than ninety days.

Sale of milk under standard quality.

1880, 209, § 4. P. S. 57, § 6. 1886, 318, § 2. 1900, 300, § 2.

SECTION 58. Whoever, himself or by his agent, sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, milk from which the cream or a part thereof has been removed, not having the words "*skimmed milk*" distinctly marked upon a light ground in plain, dark, uncondensed gothic letters at least one inch in length in a conspicuous place upon every vessel, can or

Vessels containing skimmed milk to be marked.

package from or in which such milk is, or is intended to be, sold, exchanged or delivered shall be punished as provided in section fifty-five. If such vessel, can or package is of the capacity of not more than two quarts, said words may be placed upon a detachable label or tag attached thereto and said letters may be less than one inch in length. 1880, 209, § 5. P. S. 57, § 7. 1885, 352, § 7. 1896, 398, § 1. 141 Mass. 129.

Sale of condensed milk regulated.

SECTION 59. Whoever sells, or offers for sale or exchange, condensed milk or condensed skimmed milk in hermetically sealed cans without having such cans distinctly labelled with the name of the manufacturer of such milk, the brand under which it is made and the contents of the can; and whoever sells condensed milk from cans or packages not hermetically sealed without having such cans or packages branded or labelled with the name of the manufacturer, shall be punished as provided in section fifty-five. 1896, 264.

Penalty for using counterfeit seal.

SECTION 60. Whoever makes, causes to be made, uses or has in his possession, an imitation or counterfeit of a seal used by an inspector of milk, collector of samples or other officer engaged in the inspection of milk, and whoever changes or tampers with a sample taken or sealed as provided in section fifty-two, shall be punished by a fine of one hundred dollars and by imprisonment for not less than three nor more than six months. 1886, 318, § 4. 1896, 398, § 3.

Penalty on inspectors for connivance, and on others for obstruction of inspectors.

SECTION 61. An inspector of milk, or his servant or agent, who wilfully connives at or assists in a violation of the provisions of sections fifty-one to sixty-four, inclusive, or of section seventy, or whoever, except as provided in section forty-two, hinders, obstructs or interferes with an inspector of milk or his servant or agent in the performance of his duty, shall be punished by a fine of not less than one hundred nor more than three hundred dollars or by imprisonment for not less than thirty nor more than sixty days. 1880, 209, § 6. P. S. 57, § 8. 1884, 310, § 5. 141 Mass. 135.

Liability of producer of milk regulated.

SECTION 62. A producer of milk shall not be liable to prosecution for the reason that the milk produced by him is not of good standard quality unless such milk was taken upon his premises or while in his possession or under his control by an inspector of milk, by a collector of samples of milk, or by an agent of the dairy bureau or of the state board of health, and a sealed sample thereof was given to him. 1894, 425. 165 Mass. 38.

SECTION 63. An officer of the state board of health or of the dairy bureau, an inspector of milk or collector of samples or other

state, city or town officer who obtains a sample of milk for analysis shall, within ten days after obtaining the result of the analysis, send it to the person from whom the sample was taken or to the person responsible for the condition of such milk. 1899, 169. 176 Mass. 292.

Result of analysis to be sent to owner.

At the trial of a complaint under Statute of 1899, chap. 223 (Rev. Laws, chap. 56, sect. 56), relative to the standard quality of milk, it appeared that the information furnished to the defendant as to the result of the analysis of the milk was in substance that the milk inspector told the defendant that he would give him the result of the analysis of the samples if he would like it, and did so, telling him the percentages of total solids and of fat in the case of each sample; that afterwards the defendant came back to the inspector's office, and the inspector then told him that he "would give him the figures in writing if he wanted them, and he said he would like the figures of the analysis of the samples that were below standard," and that the inspector wrote them down and caused the paper on which they were to be given to him. *Held*, that there was a sufficient compliance with Statute of 1899, chap. 169 (Rev. Laws, chap. 56, sect. 63), and that, the jury having been so instructed in substance, the defendant had no ground of exception.
Commonwealth *v.* McCance, 176 Mass. 292.

SECTION 64. An inspector shall make a complaint for a violation of any of the provisions of sections fifty-one to sixty-nine, inclusive, upon the information of any person who lays before him satisfactory evidence by which to sustain such complaint. 1859, 206, § 1. G. S. 49, § 149. 1868, 263, § 3. 1869, 150, § 3. P. S. 57, § 10. 141 Mass. 129.

Inspectors to make complaints.

SECTION 65. Bottles, pipettes or other measuring glasses which are used by a person, firm or corporation, or by an employee or agent thereof, at a creamery, cheese factory, condensed milk factory, milk depot or other place in this commonwealth, in determining by any test the value of milk or cream received from different persons or associations at such creameries, factories or milk depots as a basis of payment for such milk or cream, shall, before use, be tested for accuracy by the director of the Hatch experiment station of the Massachusetts Agricultural College or by a competent person who may be designated by him. Such director shall receive for such service the amount of the actual cost incurred, and no more, which shall be paid by the persons or corporations for whom it is rendered. Such bottles, pipettes or measuring glasses shall, if found to be accurate, bear in ineffaceable marks or characters the evidence that such test has been so made; if found to be inaccurate they shall be marked "Bad". 1901, 202, §§ 1, 2.

Test of utensils for determining the value of milk.

SECTION 66. Said director, or his agent, shall annually inspect, at the expense of the owners, all centrifugal or other machines used

by any person, firm or corporation, or by any agent or employee thereof, for the testing of milk or cream in fixing the value thereof; and shall cause all such machines to be put into condition to obtain accurate results with the Babcock or other test, at the expense of the owners thereof. Such machines may be replaced by new machines at the election of the persons to whom they belong. 1901, 202, § 3.

Annual tests.

SECTION 67. No person shall, either himself or as an employee of any other person, firm or corporation, manipulate any test, whether mechanical or chemical, for the purpose of measuring the butter fat contained in milk or cream as a basis for determining the value of such milk or cream, or of butter or cheese made therefrom, without first obtaining a certificate from the director of the Hatch experiment station that he is competent to perform such work. Rules governing applications for such certificates and the granting of the same shall be established by said director. The fee for issuing such a certificate shall not exceed two dollars, and shall be paid by the applicant to said director, to be used in paying the expenses incurred under the provisions of sections sixty-five to sixty-nine, inclusive. 1901, 202, § 4.

Certificate of competency.

SECTION 68. Said director shall test farmers' samples of milk or cream by the Babcock method, and report the results of each test, the cost thereof to be paid by the farmer. The director shall also test by the Babcock method, samples of milk or cream sent from any creamery, factory or milk depot in the commonwealth by its proper representative, the actual cost of such tests to be borne by the sender. The experiment station shall publish and distribute such information relative to the provisions of this section concerning the Babcock test, and the taking and forwarding of samples, as it considers necessary. 1901, 202, § 5.

Test of farmers' samples.

SECTION 69. Whoever violates any provision of the four preceding sections shall be punished by a fine of not more than twenty-five dollars for the first offence and of not more than fifty dollars for each subsequent offence. 1901, 202, § 6.

Penalty.

MEAT AND PROVISIONS.

SECTION 70. Boards of health of cities and towns may inspect the carcasses of all slaughtered animals and all meat, fish, vegetables, produce, fruit or provisions of any kind found in their cities or towns, and for such purpose may enter any building, enclosure or other place in which such carcasses or articles are stored, kept or exposed for sale. If, on such inspection, it is found that such carcasses or articles are tainted,

Inspection of meat, provisions, etc.

diseased, corrupted, decayed, unwholesome or, from any cause, unfit for food, the board of health shall seize the same and cause it or them to be destroyed forthwith or disposed of otherwise than for food. All money received by the board of health for property disposed of as aforesaid shall, after deducting the expenses of said seizure, be paid to the owner of such property. If the board of health seizes or condemns any such carcass or meat for the reason that it is affected with a contagious disease, it shall immediately give notice to the board of cattle commissioners of the name of the owner or person in whose possession it was found, the nature of the disease and the disposition made of said meat or carcass. 1872, 231, § 2.

1875, 29, § 2. P. S. 58, § 2. 1894, 491, §§ 10, 11, 13.
1876, 180, § 2. 1892, 195, § 2. 1899, 408, § 20.

Inspection of veal, etc.

SECTION 71. The board of health may inspect all veal found, offered or exposed for sale or kept with the intent to sell in its city or town and if, in its opinion, said veal is that of a calf less than four weeks old when killed, the board shall seize and destroy or dispose of it as provided in the preceding section, subject, however, to the provisions thereof relative to the disposal of money. 1866, 253, § 1. 1872, 231, § 3. 1875, 29, § 3.
1876, 180, § 3. P. S. 58, § 3; 208, § 2. 1894, 491, § 12. 1899, 408, § 20.

Penalty for obstructing inspector, etc.

SECTION 72. Whoever prevents, obstructs or interferes with the board of health in the performance of its duties as provided herein, or hinders, obstructs or interferes with any inspection or examination by it, or whoever secretes or removes any carcass, meat, fish, vegetables, fruit or provisions of any kind, for the purpose of preventing the same from being inspected or examined under the provisions of sections seventy to seventy-six, inclusive, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

P. S. 58, § 2. 1894, 491, § 13.

Sale of unwholesome food.

SECTION 73. Whoever knowingly sells, offers or exposes for sale or has in his possession with intent to sell for food any diseased animal or any product thereof, or any tainted, diseased, corrupted, decayed or unwholesome carcass, meat, fish, vegetables, produce, fruit or provisions of any kind shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment; and whoever knowingly sells any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making their condition fully known to the buyer shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

1784, 50. G. S. 166, § 1. 1875, 29, § 5. P. S. 58, § 5; 208, § 1. 1 Pick. 524.
R. S. 131, § 1. 1872, 231, § 5. 1876, 180, § 5. 1894, 491, § 15. 11 Pick. 484.

The gist of the offence under this section consists in the guilty knowledge or evil intent of a party in selling what he knows to be unfit for food. The sale, of itself, is not made criminal; but it is the sale coupled with the knowledge of the diseased state of the thing sold which constitutes the offence.

Commonwealth *v.* Boynton, 12 Cush. 499.

Penalties for sale of unwholesome meat, etc.

SECTION 74. Whoever kills or causes to be killed or knowingly sells, offers or exposes for sale or has in his possession with intent to sell for food the veal of a calf killed when less than four weeks old shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment. 1855, 239. G. S. 106, § 2. 1866, 253, § 1. 1872, 231, § 5. 1875, 29, § 5. 1876, 180, § 5. P. S. 208, § 2. 1894, 491, § 15. 97 Mass. 567.

Where a party is charged with an offence of "killing, or causing to be killed, for the purpose of sale, any calf less than four weeks old," it is not necessary to allege in the indictment or prove that he knew the calf to be less than four weeks old. The defendant is bound to know the facts and obey the law at his peril.

Under the next clause of this section, the offence is not the killing of the calf, but, "*knowingly*" selling, or having in possession with intent to sell, the meat of a calf killed when less than four weeks old; and this language makes the defendant's knowledge essential to be alleged and proved.

The legislature saw fit to make the man who kills, or causes to be killed, a calf for the purpose of sale, at all events punishable if the animal was less than four weeks old; but to punish the man who sells veal only in case he knows it to have been killed when under four weeks old.

Commonwealth *v.* Raymond, 97 Mass. 567.

Board of health may cause publication of certain facts.

SECTION 75. The board of health for the city or town in which any animal or property has been condemned under the provisions of sections seventy and seventy-one may cause a description of the place in which such condemned property was found, the name of every person in whose possession it was found and the name of every person convicted of an offence under the provisions of the two preceding sections to be published in two newspapers published in the county in which such property was found.

1872, 231, § 6. 1875, 29, § 6. 1876, 180, § 6. P. S. 58, § 6. 1894, 491, § 16.

POULTRY.

Sale of poultry regulated.

SECTION 76. Whoever knowingly sells or exposes for sale poultry, unless it is alive, before it has been properly dressed by the removal of the crop and entrails if they contain food, shall be punished by a fine of not less than five nor more than fifty dollars for each offence. Boards of health shall cause the provisions of this section to be enforced in their respective cities and towns. 1883, 230. 1887, 94.

FISH.

Rev. Laws, 56.

SECTION 25. Whoever sells within this commonwealth or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

Penalty for selling tainted fish for food.

1809, 120, § 3. R. S. 28, § 90. G. S. 49, § 57. P. S. 56, § 45.

VINEGAR.

Revised Laws, 57.

SECTION 66. Whoever, himself or by his servant or agent or as the servant or agent of another person, sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange, or deliver or exposes or offers for sale or exchange adulterated vinegar, or whoever labels, brands or sells, as cider vinegar or as apple vinegar, any vinegar not the legitimate product of pure apple juice or not made exclusively from apple cider, shall be punished by a fine of not more than one hundred dollars.

Penalty for selling adulterated vinegar.

1880, 113, § 1. P. S. 60, § 69. 1883, 257, § 1. 1884, 307, §§ 1, 4.

SECTION 67. Vinegar shall contain no artificial coloring matter, and shall have an acidity equal to the presence of not less than four and one-half per cent by weight of absolute acetic acid. Cider vinegar shall, in addition, contain not less than two per cent by weight of cider vinegar solids upon full evaporation over boiling water. If vinegar contains any artificial coloring matter, or less than the required amount of acidity, or if cider vinegar contains less than the required amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated.

Qualities of vinegar defined.

1884, 307, § 2. 1885, 150.

SECTION 68. Every person who manufactures for sale, or offers or exposes for sale, any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid or other ingredient injurious to health shall for each such offence be punished by a fine of not less than one hundred dollars.

Penalty for selling deleterious vinegar.

1880, 113, § 2. P. S. 60, § 70.

SECTION 69. Inspectors of milk shall cause the provisions of the three preceding sections to be enforced.

Enforcement of penalties.

1880, 113, § 2. P. S. 60, § 71. 1883, 257, § 2. 1884, 307, § 3.

CHOCOLATE.

SECTION 8. Chocolate in cakes shall be made in pans in which shall be stamped the name of the manufacturer, the town in which he resides, the quality of the chocolate in figures, "No. 1", "No. 2", "No. 3", as the case may be, and the letters MASS. 1802, 133. 1803, 54, § 1. R. S. 28, § 60. G. S. 49, § 24. P. S. 60, § 8.

Chocolate, how to be stamped.

SECTION 9. Quality number one shall be made of cocoa of the first quality and quality number two of cocoa of the second quality, and both shall be free from adulteration; quality number three may be made of the inferior kinds and qualities of cocoa. Each box containing chocolate shall be branded on the end thereof with the word "*chocolate*", the name of the manufacturer of the chocolate, the town in which it was manufactured and the quality, as described and directed in the preceding section for the pans. 1802, 133. 1803, 54, § 2. R. S. 28, § 61. G. S. 49, § 25. P. S. 60, § 9.

Chocolate, ingredients of. Boxes, how branded.

SECTION 10. If chocolate manufactured in this commonwealth is offered for sale or found and is not of one of the qualities described in the two preceding sections or marked as therein directed, it may be seized and libelled. 1802, 133. 1803, 54, §§ 3, 4. R. S. 28, § 62. G. S. 49, § 26. P. S. 60, § 10.

Chocolate, seizure of.

SALE OF FOOD, DRUGS AND POISONS.

OF CRIMES AGAINST THE PUBLIC HEALTH.

Rev. Laws, 213.

SECTION 1. Whoever, for the purpose of sale, adulterates any liquor used or intended for drink with Indian cockle, vitriol, grains of paradise, opium, alum, cochineal, capsicum, copperas, laurel water, logwood, Brazil wood, sugar of lead or any other substance which is poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison for not more than three years; and the articles so adulterated shall be forfeited. 1855, 356. G. S. 166, § 4. P. S. 208, § 4.

Adulteration of liquor used for drink.

SECTION 2. Whoever sells arsenic (arsenious acid), atropia or any of its salts, chloral hydrate, chloroform, cotton root and its fluid extract, corrosive sublimate, cyanide of potassium, Donovan's solution, ergot and its fluid extract, Fowler's solution, laudanum, McMunn's elixir, morphia or any of its salts, oil of pennyroyal, oil of savin, oil of tansy, opium, Paris green, Parson's vermin exterminator, phosphorus, prussic acid, "rough on rats", strychnia or any of its salts, tartar emetic, tincture of aconite, tincture of belladonna, tincture of digitalis, tincture of nux vomica, tincture of veratrum viride, or carbolic acid, without the written prescription of a physician, shall affix to the bottle, box or wrapper containing the article sold a label of red paper upon which shall be printed in large black letters the name and place of business of the vendor and the words *Poison* and *Antidote*, and the label shall also contain the name of an antidote, if any, for the poison sold. He shall also keep a record of the name and quantity of the article sold and of the name and residence of the person or persons to whom it was delivered, which shall be made before the article is delivered and shall at all times be open to inspection by the officers of the district police and by the police authorities and officers of cities and towns; but no sale of cocaine or its salts shall be made except upon the prescription of a physician. Whoever neglects to affix such label to such bottle, box or wrapper before delivery thereof to the

Sale of poison.

purchaser or whoever neglects to keep or refuses to show to said officers such record or whoever purchases any of said poisons and gives a false or fictitious name to the vendor shall be punished by a fine of not more than fifty dollars. The provisions of this section shall not apply to sales by wholesale dealers or manufacturing chemists to retail dealers, or to a general merchant who sells Paris green, London purple or other arsenical poisons in unbroken packages containing not less than one-quarter of a pound, for the sole purpose of destroying potato bugs or other insects upon plants, vines or trees, except that he shall record each sale and label each package sold, as above provided. 1857, 280. G. S. 166, § 7. P. S. 208, § 6. 1887, 38. 1888, 209. 1896, 397, § 20. 1898, 192.

Sale of cigarettes or tobacco to minors.

SECTION 3. Whoever sells a cigarette to a person under eighteen years of age, or whoever sells snuff or tobacco in any of its forms to a person under sixteen years of age, or, not being his parent or guardian, gives a cigarette to a person under eighteen years of age, or gives snuff or tobacco in any of its forms to a person under sixteen years of age, shall be punished by a fine of not more than fifty dollars. 1886, 72. 1901, 373.

Sale of candy containing alcohol.

SECTION 4. Whoever sells to a person under sixteen years of age any candy or other article enclosing liquid or syrup containing more than one per cent of alcohol shall be punished by a fine of not less than fifty nor more than one hundred dollars. 1891, 333.

Sale of articles containing arsenic.

SECTION 6. Whoever himself or by his agent or servant, or as the agent or servant of another person, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, any toys or confectionery, containing or coated wholly or in part with arsenic, shall be punished by a fine of not less than fifty nor more than one hundred dollars. 1891, 374, § 1.

Samples for analysis.

SECTION 7. Whoever offers or exposes for sale or exchange any paper, fabric or other article shall furnish a sample thereof sufficient for the purpose of ascertaining by analysis the existence of arsenic therein, if such sample can be obtained without damage to the remaining portion, to any inspector, chemist or other agent or officer of the state board of health who applies therefor and tenders the value thereof; and for a violation of the provisions of this section shall be punished as provided in the preceding section. 1891, 374, § 3.

SECTION 8. Whoever himself or by his agent or servant manufactures, sells or exchanges, or has in his custody or possession

with intent to sell or exchange, any woven fabric or paper containing arsenic in any form, or any article of dress or household use composed wholly or in part of such woven fabric or paper, shall be punished by a fine of not less than fifty nor more than two hundred dollars; but the provisions of this section shall not apply to articles intended for the destruction of insects, having the word "*Poison*" plainly printed in uncondensed gothic letters not less than one inch long on both sides of each sheet and square foot of the fabric, or to dress goods or articles of dress containing not more than one one-hundredth grain, or to other materials or articles containing not more than one-tenth grain of arsenic for each square yard of the material. The state board of health shall make all necessary investigations as to the existence of arsenic in the aforesaid articles and materials, employ inspectors and chemists and adopt such measures as are necessary to enforce the provisions of this section. 1900, 325. 1901, 188.

Sale of textiles containing arsenic.

SECTION 9. Whoever, in the manufacture of sausages, uses any coloring matter injurious to health shall be punished by a fine of not more than one hundred dollars for each offence. 1898, 193.

Coloring matter in sausages.

Acts of 1902, 540.

AN ACT RELATIVE TO THE LABELING OF BAKING POWDERS.

SECTION 1. Whoever manufactures for sale within this state, or offers or exposes for sale or sells any baking powder or mixture or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound, a label distinctly printed in brevier gothic capital letters, in the English language, containing the name and residence of the manufacturer and the ingredients of the baking powder, mixture or compound.

Baking powders to be labeled.

SECTION 2. Whoever violates any provision of this act shall be punished by a fine of not less than ten nor more than one hundred dollars for each offence.

Penalty.

RULES AND REGULATIONS

OF THE

STATE BOARD OF HEALTH RELATIVE TO THE INSPECTION AND ANALYSIS OF FOOD AND DRUGS.

1. The State Board of Health shall appoint analysts and inspectors, as provided in section 5 of chapter 75 of the Revised Laws.

2. It shall be the duty of the inspectors to procure samples of drugs and articles of food at such times and places as the secretary shall direct, in the manner provided in section 20 of chapter 75 of the Revised Laws.

3. Under the direction of the secretary, the inspectors shall, for the identification of samples, affix a number to each sample of food or drugs obtained by them in such manner as may be prescribed. Under no circumstances shall an inspector convey any information to an analyst as to the source from which any sample was obtained.

4. The inspector shall keep records of each sample, each record to include the following items: —

(*a*) The inspector's number.

(*b*) The date of purchase or receipt of sample.

(*c*) The character of the sample.

(*d*) The name of the vendor.

(*e*) The name of the city or town and street and number where the sample is obtained, and in the case of a licensed milk peddler, the number of his license.

(*f*) As far as possible the names of manufacturers, producers or wholesalers, with marks, brands or labels stamped or printed upon goods.

5. It shall be the duty of the analysts so appointed to determine, under the direction of the secretary, by

proper examination and analysis, whether articles of food and drugs, manufactured for sale, offered for sale or sold within this Commonwealth, are adulterated within the meaning of section 18, chapter 75 of the Revised Laws, adulteration being defined as follows, viz. : —

A drug shall be deemed to be adulterated : (1.) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity prescribed therein, unless the order therefor requires an article inferior to such standard or unless such difference is made known or so appears to the purchaser at the time of the sale. (2.) If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or other standard work on Materia Medica, it differs materially from the standard of strength, quality or purity prescribed in such work. (3.) If its strength, quality or purity falls below the professed standard under which it is sold.

Food shall be deemed to be adulterated : (1.) If any substance has been mixed with it so as to reduce, depreciate or injuriously affect its quality, strength or purity. (2.) If an inferior or cheaper substance has been substituted for it wholly or in part. (3.) If any valuable or necessary constituents or ingredients have been wholly or in part taken from it. (4.) If it is an imitation of or is sold under the name of another article. (5.) If it consists wholly or in part of a diseased, decomposed, putrid, tainted or rotten animal or vegetable substance or article, whether manufactured or not, or in case of milk, if it is produced by a diseased animal. (6.) If it is colored, coated, polished or powdered in such a manner as to conceal its damaged or inferior condition, or if by any means it is made to appear better or of greater value than it is. (7.) If it contains any added substance or ingredient which is poisonous or injurious to health. (8.) If it contains any added antiseptic or preservative substance, except

common table salt, saltpetre, cane sugar, alcohol, vinegar, spices, or, in smoked food, the natural products of the smoking process; but the provisions of this definition shall not apply to any such article if it bears a label on which the presence and the percentage of every such antiseptic or preservative substance are clearly indicated, nor shall it apply to such portions of suitable preservative substances as are used as a surface application for preserving dried fish or meat, or as exist in animal or vegetable tissues as a natural component thereof, but it shall apply to additional quantities. . . . The provisions of this and the two preceding sections relative to food shall not apply to mixtures or compounds not injurious to health and which are recognized as ordinary articles or ingredients of articles of food, if every package sold or offered for sale is distinctly labeled as a mixture or compound, with the name and per cent. of each ingredient therein.

6. It shall also be the duty of the analysts to receive such specimens of food and drugs for analysis as may be delivered to them by the secretary, or by the inspectors, and to examine the same. To avoid, as far as possible, all suggestions or danger of specimens having been tampered with, each analyst shall keep each specimen in his possession in a suitable and secure place, labeled in such a manner as to prevent any person from having access to the same without the knowledge and presence of the analyst.

Analyses of perishable articles should be made promptly after they are received.

7. An analyst shall give no information, under any circumstances, regarding the result of any analysis, to any person except to the secretary of the board, prior to any trial in court in reference to such analysis.

The analysts shall carefully avoid any error regarding the inspector's number attached to each sample, and shall report the results of their work in detail to the secretary.

In the case of all articles having a numerical standard

provided by statute, the result of the analysis should show their relation to such standard.

8. Before beginning the analysis of any sample, the analyst shall reserve a portion, which shall be sealed, and in the event of finding the portion analyzed to be adulterated, he shall preserve the sealed portion, so that in case of a complaint against any person the last-named portion may, on application, be delivered by the secretary to the defendant or to his attorney.

9. Each analyst shall present to the secretary, on the Monday before the first Thursday of each month, a summary of the analyses made by him during the previous month.

Each analyst shall also present, on or before the first of January of each year, an annual report of the work done for the year ending on the 30th of September preceding.

10. The secretary shall have charge of the reports of analyses, and shall cause cases founded on such reports to be submitted to the courts for prosecution.

In each case of a retailer, and of every dealer not a manufacturer or producer, he may, if the party has not been previously complained of in court, issue a notice or warning of any violation of the law relative to the adulteration of food and drugs, and of the offender's liability to prosecution on a repetition of the sale.

11. Should the result obtained by any analyst be questioned in any given case, another analyst shall repeat the analysis, unless otherwise instructed by the Board, provided a sufficient sum to meet the expense of the analysis be deposited with the secretary by any interested party feeling aggrieved, which sum will not be returned unless the second analysis fails to confirm the first in essential particulars.

12. Any appeal from the decision of an analyst shall be filed with the secretary, who shall report it, and any matter in controversy, to the Board, giving his judgment

thereon, and the Board shall supervise and control the action of its officers in executing the law.

13. Where standards of strength, quality or purity are not fixed by the act, the analysts shall present to the secretary such standard as in their judgment should be fixed, and the secretary shall report the same to the Board for its action.

14. Whenever a drug or preparation, not described in a national pharmacopœia or other standard work on Materia Medica, shall be manufactured, offered for sale or used in this State, the standard of such drug, and the standard and proportion of the ingredients of such preparation, and the range of variability from such standard or standards, shall be ascertained by the analysts, who shall report the same through the secretary to the Board.

15. The analysts shall occupy such time in the performance of their respective duties as a reasonable compliance with the terms of the statute shall require, and shall be present one hour of each day, at such time of the day and at such place as shall be designated by the Board, to meet the convenience of interested parties and the public.

ADDENDA.

The following material, which was omitted from former Health Manuals, relates to matters pertaining to the public health. The decision relating to swine was received too late to be put in its proper place in the Manual. The proper place for its insertion is on page 38, following the line "Quincy *v.* Kennard, 151 Mass."

Rev. Laws, 11.

SECTION 361. If there is a failure to elect, or if a vacancy occurs in any town office, other than the offices of selectmen, town clerk, assessor, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, the remaining members shall give notice thereof in writing to the selectmen, who, with the remaining member or members of such board shall, after one week's notice, fill such vacancy by ballot. A majority of the ballots of the officers entitled to vote shall be necessary to such election. The person appointed or elected shall perform the duties of the office until the next annual meeting or until another is chosen and qualified.

Certain offices to be filled by appointment.

1864, 174. P. S. 27, § 86. 1891, 336, § 1. 1893, 417, § 290. 1898, 548, § 357.

Rev. Laws, 26.

SECTION 18. A city may establish ordinances to secure the inspection of ice sold within its limits and to prevent the sale of impure ice, and may affix penalties of not more than twenty dollars for each violation thereof. 1895, 338.

Ice, inspection of.

Rev. Laws, 28.

SECTION 22. If in a town in the metropolitan parks district as defined in section three of chapter four hundred and seven of the acts of the year eighteen hundred and ninety-three, or in any city, tenement buildings are built about or contiguous to open spaces, the owners of such buildings may apply to the board of park commissioners, if any, or, in a city or

Public playgrounds.

town of said district having no park commission, to the metropolitan park commission, and said boards may, with the approval of the board of health of the city or town, take a lease of such open spaces for a neighborhood playground for a term not exceeding fifteen years, subject to renewal, at a rental not exceeding the taxes thereon. The owners of such buildings shall have the care and control thereof under the supervision of the board of park commissioners, or if there is none, of the selectmen. 1893, 331.

Rev. Laws, 51.

Fences, etc., to prevent spread of disease, not to be removed.

SECTION 11. No surveyor, road commissioner or other person shall, without an order from the board of health, remove or take down fences, gates or bars which have been placed on a way for the purpose of preventing the spread of a disease dangerous to the public health.

1786, 81, § 11. R. S. 25, § 4. G. S. 44, § 9. P. S. 52, § 11.

Rev. Laws, 53.

Removal of gates, rails, etc., on ways.

SECTION 3. Any person may remove gates, rails, bars or fences which are upon or across a highway, town way or private way legally laid out, or they may be removed by the order of a justice of the peace, unless they have been placed there to prevent the spread of a disease dangerous to the public health, or unless they have been erected or continued by the license of the county commissioners or of the selectmen or road commissioners or of the person for whose use such private way was laid out. A person aggrieved by such removal may apply to the county commissioners, selectmen or road commissioners, respectively, and if upon examination it appears that such gates, rails, bars or fences were erected or continued by such license, they shall order the same to be replaced. C. L. 65, § 3.

1693–4, 6, § 5. R. S. 25, §§ 27, 43. P. S. 54, §§ 4, 5. 8 Allen, 473.
1786, 81, § 5. G. S. 46, §§ 4, 5. 10 Mass. 71. 130 Mass. 113.

DECISIONS OF THE SUPREME COURT.

Statutes 1894, chap. 491, sect. 18, providing for the granting of licenses to slaughter houses by the mayor and aldermen of cities, and the selectmen of towns, or such other board of officers as they shall designate, does not take away the power of the board of health of a city under Pub. Stats. chap. 80, sect. 84, to forbid the carrying on of a slaughter house as dangerous to the public health, and the maintenance of a slaughter house so licensed may be prohibited by that board. This power is in no way affected by Statute of 1897, chap. 428, sect. 2, providing that in towns having a population of

more than 5,000 the board of health instead of the selectmen shall have charge of licensing slaughter houses.

Cambridge *v.* Trelegan, 181 Mass. 565.

A prosecution for the violation of a by-law of a town adopted under Rev. Laws, chap. 25, sect. 23, can be begun only by a complaint before a police, district or municipal court or a trial justice, instituted by the town treasurer, and cannot be begun by indictment in the superior court,

A by-law of a town, adopted when the town had a board of health having jurisdiction of offensive trades and employments under Rev. Laws, chap. 75, sect. 91, providing that no person should keep within the limits of the town more than five swine, exclusive of the offspring of the five less than four months old, is invalid as against a person engaged in the business of keeping swine in that town.

Commonwealth *v.* Rawson, 183 Mass. 491.

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